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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026 (REG)

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.,

f/k/a General Motors Corp., et al.,

Debtors.

- - - - -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

August 6, 2010

9:49 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

1
2 HEARING re Motion of Debtors for Entry of Order Pursuant to 11
3 U.S.C. Section 363 Authorizing the Debtors to Amend the Terms
4 of Their Engagement Letter with AP Services, LLC [Docket No.
5 6362]

6
7 HEARING re Application by AP Services, LLC as Crisis Managers
8 to the Debtors for Approval of the Success Fee [Docket No.
9 6363]

10
11 HEARING re Motion of Julie and David Brittingham for Relief
12 from the Automatic Stay to allow the Completion of a Pending
13 Personal Injury Action [Docket No. 6332]

14
15 HEARING re Motion of Debtors for Entry of Order Pursuant to
16 Fed. R. Bankr. P. 9019 Approving Stipulation and Agreed Order
17 Between the Debtors, Wilmington Trust Company, and Citibank,
18 N.A. Solely in its Capacity as Paying Agent, Regarding Proofs
19 of Claim Nos. 47871, 47872, 65729, 65793, and 66723 [Docket No.
20 6249] ("Stipulation Motion")

21
22 HEARING re Motion of Debtors for Entry of Order Pursuant to
23 Fed. R. Bankr. P. 9019 and Fed. R. Civ. P. 23 Approving
24 Agreement Resolving Proof of Claim No. 44887 and Implementing
25 Class Settlement [Docket No. 6331] ("Soders Motion")

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HEARING re Debtors' Motion for Preliminary Approval of
Settlement, Including Claims Estimation, for Conditional
Certification of Settlement Class, to Approve Cash Disbursement
and Forms of Notice, and to Set Fairness Hearing in the Boyd
Bryant v. Motors Liquidation Company Adversary Proceeding
[Docket No. 44]

HEARING re Debtors' Fifteenth Omnibus Objection to Claims
(Amended and Superseded Claims) [Docket No. 5731]

HEARING re Debtors' Seventeenth Omnibus Objection to Claims
(Tax Claims Assumed by General Motors, LLC) [Docket No. 5908]

HEARING re Debtors' Twentieth Omnibus Objection to Claims (Tax
Claims Assumed by General Motors, LLC) [Docket No. 5912]

HEARING re Debtors' Twenty-Fifth Omnibus Objection to Claims
(Amended and Superseded Claims) [Docket No. 6232]

HEARING re Debtors' Twenty-Sixth Omnibus Objection to Claims
(Duplicate Claims) [Docket No. 6233]

HEARING re Debtors' Twenty-Seventh Omnibus Objection to Claims
(Incorrectly Classified Claims) [Docket No. 6250]

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HEARING re Debtors' Twenty-Eighth Omnibus Objection to Claims
(Incorrectly Classified Claims) [Docket No. 6251]

HEARING re Debtors' Twenty-Ninth Omnibus Objection to Claims
(Incorrectly Classified Claims) [Docket No. 6252]

HEARING re Debtors' Thirtieth Omnibus Objection to Claims
(Incorrectly Classified Claims) [Docket No. 6253]

HEARING re Debtors' Thirty-First Omnibus Objection to Claims
(Incorrectly Classified Claims) [Docket No. 6254]

HEARING re Debtors' Thirty-Second Omnibus Objection to Claims
(Incorrectly Classified Claims) [Docket No. 6255]

HEARING re Debtors' Thirty-Third Omnibus Objection to Claims
(Claims with Insufficient Documentation) [Docket No. 6256]

HEARING re Debtors' Thirty-Fourth Objection to Claims (Claims
with Insufficient Documentation) [Docket No. 6257]

HEARING re Debtors' Thirty-Fifth Omnibus Objection to Claims
(Claims with Insufficient Documentation) [Docket No. 6258]

HEARING re Debtors' Thirty-Sixth Omnibus Objection to Claims
(Claims with Insufficient Documentation) [Docket No. 6259]

HEARING re Debtors' Thirty-Seventh Omnibus Objection to Claims
(Claims with Insufficient Documentation) [Docket No. 6260]

HEARING re Debtors' Thirty-Eighth Omnibus Objection to Claims
(Tax Claims assumed by General Motors, LLC) [Docket No. 6261]

HEARING re Motion of Dean M. Trafelet, Future Claimants'
Representative, for an Order Clarifying the Order Appointing
Him as Legal Representative for Future Asbestos Personal Injury
Claimants and Directing Payment of His Fees and Expenses, or in
the Alternative, Awarding an Administrative Expense Pursuant to
Section 503(a) or (b) of the Bankruptcy Code [Docket No. 6262]

HEARING re Motion of Debtors for Entry of Order Pursuant to
Sections 105(a) and 363(b) of the Bankruptcy Code Approving
Settlement Agreements with Respect to (A) the International
Association of Machinists and Aerospace Workers, and (B) the
International Brotherhood of Teamsters [Docket No. 6341]

Transcribed By: Clara Rubin

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1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: All right, have seats please.

4 (Pause)

5 THE COURT: Folks, I'm going to take unopposed and
6 administrative matters first, then I'm going to take the AP
7 Services issues, and then I'm going to take the Brittinghams'
8 motion for relief from the stay. After we take care of the
9 unopposed stuff, you can then sit down, as I'm going to have
10 one or two preliminary comments or matters that I'll want you
11 all to help me with as we then go forward.

12 Okay, who's going to take the lead? That being you,
13 Mr. Smolinsky?

14 MR. SMOLINSKY: Good morning, Your Honor. Joe
15 Smolinsky of Weil, Gotshal & Manges, for the debtor.

16 Your Honor, before we launch into the unopposed or
17 uncontested matters, I think it would be helpful to give a
18 minute or two of an update on where we are in the case. I
19 think it's helpful --

20 THE COURT: Good. That'll help me with the creditors'
21 committee's response also.

22 MR. SMOLINSKY: Yes, Your Honor. It's also helpful to
23 periodically report to the Court and, in that way, the public
24 about where we stand.

25 Your Honor, I think the big key message for today is

1 that the debtors currently intend to file within the next two
2 weeks a plan and disclosure statement and will be targeting a
3 disclosure statement hearing towards the end of September.

4 As we see it, there continue to be two gating issues
5 in the case, but I'm happy to report that one of the gating
6 issues, the issue of the debtors' obligations with respect to
7 environmental matters on owned and managed sites, has
8 progressed significantly.

9 THE COURT: Pause please, Mr. Smolinsky.

10 (Pause; judge and clerk confer)

11 THE COURT: I'm sorry, Mr. Smolinsky. Ms. Blum tells
12 me we need to call into CourtCall.

13 MR. SMOLINSKY: Very good, Your Honor.

14 THE COURT: I thought they were already on.

15 (Pause; telephonic parties being dialed in)

16 THE COURT: Okay, Mr. Smolinsky, would you continue,
17 please?

18 MR. SMOLINSKY: Sure. Let me just back up for those
19 that are on the phone. Just by way of background and case
20 update generally, we are planning to file a plan and disclosure
21 statement within the next two weeks, and we are targeting a
22 disclosure statement hearing at the end of September.

23 As we see it, there are two gating issues in the case
24 that continue; the first is the debtors' obligations with
25 respect to environmental matters on owned and managed sites.

1 There's been significant progress in that regard, and we're
2 happy to report that it's our understanding that the construct
3 of the environmental trust that will be set up under the plan,
4 as well as the amount of money that's going to be used to fund
5 those trusts, have now been agreed to not only by the U.S.
6 States government in all branches but by all of the states that
7 are impacted by those sites. And we expect that settlement
8 agreement -- well, the settlement documents, which have had
9 many iterations over the last several weeks, will be in a
10 position to where they would be finalized as included with the
11 plan when it's filed.

12 THE COURT: Pause, Mr. Smolinsky, because you may have
13 just hit the one question I would have had. Would you be
14 weaving your settlement into the plan, or would you be doing it
15 by a separate 9019, whose consequences would then be addressed
16 as part of the liquidation that I assume you're going to
17 implement by the plan?

18 MR. SMOLINSKY: We were actually not contemplating
19 treating it as a 9019 but, rather, part of the regular
20 feasibility analysis as part of plan confirmation. These are
21 administrative expense claims, and how we treat them under the
22 plan is part of the very nature of the plan and the fabric of
23 the plan as opposed to settlement. I understand your question.
24 It's a little bit complicated because we are, effectively,
25 overfunding that trust using Treasury's money as part of a

1 settlement with the states, but we weren't anticipating
2 treating it specifically under 9019.

3 THE COURT: Um-hum. Continue, please.

4 MR. SMOLINSKY: The other gating issue, the estimation
5 of asbestos liabilities for current and future claims,
6 continues to run its course. Your Honor, I'm sure, is aware of
7 recent filings of 2004 examination requests by the unsecured
8 creditors' committee, the creditors' committee for asbestos
9 claimants, and the future claims representative.

10 THE COURT: Yes, I am.

11 MR. SMOLINSKY: Well, a hearing has been scheduled for
12 this coming Monday. The issues have been resolved with the
13 asbestos committee as well as the future claims representative.
14 Pursuant to an agreement that's been executed, it involves the
15 significant cooperation of New GM. They've been very helpful
16 in getting us to that agreement.

17 With respect to the -- and those 2004 requests have
18 been withdrawn on the record.

19 With respect to the unsecured creditors' committee
20 request, similarly, with the help of New GM, we have reached
21 agreement with the unsecured creditors' committee. So, there
22 are no outstanding issues between the committee and New GM or
23 the debtors. There still remain some issues related to third
24 parties, which I imagine will be heard on Monday -- Monday's
25 hearing.

1 So we hope to begin settlement discussions in earnest
2 with the various constituencies regarding the asbestos
3 liability in the very near future. The parties, I think, are
4 all aware and understand that, in the absence of an agreement
5 relatively soon, there would be expected to be an estimation
6 hearing before Your Honor in connection with confirmation of a
7 plan.

8 On the claims front, we continue to make significant
9 progress. I think we're up to omnibus claims motion number 38,
10 and we intend to file dozens of additional motions -- or
11 objections in the next thirty days so that we'll be in a
12 position to make meaningful distributions on and after the
13 effective date.

14 Looking ahead, I think we're really positioned to
15 confirm a plan by year end; that's certainly our goal and our
16 target. I imagine it's going to take a substantial effort of
17 all the parties and more than some accommodations on the part
18 of Your Honor. As we've tried to, we'll continue to work with
19 chambers to try and minimize the disruption to your calendar,
20 but we may in fact be asking for several days for the asbestos
21 estimation, if that is necessary, and various other hearings as
22 we move towards confirmation.

23 THE COURT: Okay. Thank you.

24 MR. SMOLINSKY: Moving to the uncontested matters, I
25 believe the first matter on the agenda is a motion seeking

1 approval of a stipulation with Wilmington Trust. Wilmington
2 Trust, Your Honor may recall, is the indentured trustee for all
3 of MLC's public indentures. We are, under the stipulation,
4 allowing claims in the aggregate of approximately 23.5 billion
5 dollars. We are getting rid of duplicative claims and we're
6 providing for the allowance and treatment of claims for fees
7 incurred by the indentured trustee as well as the paying agent.

8 Of equal importance, it paves the way for what's been
9 previewed for this Court, the objection of claims filed by
10 individual bondholders, which are essentially duplicative of
11 the trustee's claims. In that regard, I'd like to draw Your
12 Honor's attention to the declaration of David Vanaskey, which
13 was filed in connection with the stipulation. It's always been
14 the goal of the debtors and the indentured trustee to make sure
15 that individual bondholders were aware of what was going on.
16 As set forth in the declaration, once we filed this
17 stipulation, a notice was sent out to all of the bondholders,
18 which is attached to the declaration. They've established a
19 Web site which contains a variety of information, including the
20 motion, stipulation, objection deadlines. They've set up a
21 call center. And the declaration sets out that notice, and we
22 believe that that notice was the best and most reasonable way
23 of notifying parties as to the pendency of these matters.

24 We did, Your Honor, need to revise the stipulation
25 slightly. Initially we had thought that Citibank's fees were

1 \$173,063.43. It turns out that in fact the fees are lower than
2 that at \$162,333.71. So we went ahead and re-executed a
3 revised stipulation reflecting that change, and we would
4 propose to submit that for approval and entry.

5 There was one objection filed by Deutsche Bank.
6 Deutsche Bank is currently in the midst of a litigation with
7 MLC over certain obligations that Deutsche Bank has to the
8 estate, as well as certain setoff rights that Deutsche Bank has
9 asserted for any obligation that it owes to the estate against
10 its bonds. We have no idea what the timeline of that
11 litigation will be, but we always envisioned to try not to
12 prejudice them. In fact, you would see in the stipulation the
13 fact that we provided that, if there are any setoff rights of
14 any of the individual bondholders, that the amount of the
15 allowed claim of Wilmington Trust would be reduced to reflect
16 the fact that there would be no distributions on account of
17 those claims.

18 Of course the trick is in the detail, because they of
19 course are claiming to be beneficial bondholders.
20 Distributions are made through record holders. So the
21 mechanics of actually withholding distributions to a record
22 holder on behalf of a beneficial holder is difficult, but the
23 parties will --

24 THE COURT: Especially if that record holder
25 presumably is holding in street name for multiple bondholders,

1 I imagine.

2 MR. SMOLINSKY: That's right, Your Honor. So we
3 really have no fix for that, but we'll work with Deutsche Bank
4 to come up with a mechanic for figuring all that out in
5 connection with the plan. But for now I think it's everyone's
6 view that no rights are prejudiced by the stipulation with
7 respect to Deutsche Bank's asserted setoff right.

8 THE COURT: Mr. Smolinsky, pause. I see a gentleman
9 behind Ms. Riffkin standing.

10 Are you counsel for Deutsche Bank? And are you going
11 to want to be heard on this?

12 MR. CLARK: Very briefly, Your Honor, just to
13 reiterate what Mr. Smolinsky --

14 THE COURT: All right, you're not near a microphone.

15 Mr. Smolinsky, do you mind yielding for a second to
16 allow him to be heard, please?

17 MR. CLARK: Thank you, Your Honor. Jared Clark,
18 Bingham McCutchen, for Deutsche Bank AG.

19 THE COURT: Was that Clark?

20 MR. CLARK: Clark, Your Honor.

21 THE COURT: Yes.

22 MR. CLARK: As detailed in the limited objection filed
23 by Deutsche Bank, Deutsche Bank has filed a secured proof of
24 claim in respect of amounts that, on information and belief,
25 overlap with amounts also claimed by the indentured trustee in

1 its representative capacity. Deutsche Bank has also filed a
2 motion to set off those amounts, among others, against
3 obligations owed by Deutsche Bank.

4 That motion, that setoff motion, was calendared to be
5 heard today and, at the debtors' request, the setoff motion has
6 been adjourned to September 24th. Deutsche Bank has agreed
7 with the debtors and Wilmington Trust that approval of the
8 stipulation presently before the Court will be without
9 prejudice to any rights Deutsche Bank may have to setoff or as
10 a secured creditor. With this reservation of rights agreed and
11 on the record, Deutsche Bank does not object to the Court's
12 approval of the stipulation.

13 THE COURT: Okay.

14 MR. CLARK: Thank you, Your Honor.

15 THE COURT: Mr. Smolinsky, back to you.

16 MR. SMOLINSKY: Unless Your Honor has any questions on
17 Wilmington Trust, we'd ask that that stipulation be submitted
18 for approval.

19 THE COURT: Of course it will be, Mr. Smolinsky; it's
20 in the interest of everybody. And I'll just leave it to you
21 and Deutsche Bank and the record owner to tee things up so you
22 can simplify things and not prejudice other bondholders by
23 reason of the Deutsche Bank issues.

24 I guess one thought is maybe stuff that's held in
25 street name can be transferred to record ownership so the

1 remainder can be -- of the bondholders cannot be prejudiced by
2 this little dispute. But any way you guys want to deal with it
3 is fine with me.

4 MR. SMOLINSKY: It's an excellent suggestion, Your
5 Honor.

6 The next uncontested matter is a settlement with the
7 Soders class action. I'd like to yield the podium to my
8 colleague Angela Zimbrano.

9 THE COURT: Sure.

10 Was that Ms. Zimbrano?

11 MS. ZAMBRANO: (No audible response).

12 THE COURT: Thank you. Good morning.

13 MS. ZAMBRANO: Angela Zimbrano from Weil, Gotshal &
14 Manges, also on behalf of the debtors, for the record.

15 As Mr. Smolinsky said, I'm here today to seek approval
16 of a class action proof of claim. Not surprisingly, there have
17 been a number of purportedly filed class action proofs of
18 claims. The majority of these claims, Your Honor, are filed on
19 behalf of putative classes, in other words, classes that have
20 not been certified prior to the petition date. And we actually
21 have a motion to expunge that type of claim, a putative class
22 action claim that is pending before the Court and will be heard
23 next month.

24 We are here today asking the Court to approve two
25 class actions settlements, both of which were certified prior

1 to the petition date. Now, of course the Court knows that Rule
2 23 does not automatically apply in bankruptcy such that a class
3 plaintiff can continue to represent a class once a bankruptcy
4 petition has been filed. Rather, it is in Your Honor's
5 discretion as to whether to permit -- to apply -- direct that
6 Rule 23 apply, and we are asking that you do so in connection
7 with these limited circumstances, because it's both fair to the
8 class and to the debtors.

9 I'm going to address the Soder settlement first, but
10 the next item on the agenda is actually another settlement of a
11 class action that Mr. Smolinsky's going to handle also, called
12 the Bryant settlement. Both of those, as I say, are class
13 action proofs of claims that relate to certified classes.

14 Turning first to the settlement of the Soders case,
15 the Soders case was not only certified, Your Honor, prior to
16 the petition date; it was actually -- the parties had actually
17 reached a settlement of the class claims. And the Court -- the
18 Pennsylvania court there had finally approved the settlement.
19 Notice went out to the class, the whole thing. The only reason
20 we are here today on this matter is because, although the Court
21 was provided -- excuse me, the class was provided notice, and
22 the state court finally approved the settlement, there was an
23 appeal of the settlement that stopped the distribution of the
24 settlement prior to the petition date. Thus, Mr. Roda, who's
25 here today, filed a proof of claim on behalf of the class

1 against MLC for the following things: attorneys' fees of
2 approximately 843,000 dollars; reimbursement of out-of-pocket
3 costs, primarily for the notice to the class, of approximately
4 473,000 dollars; a 5,000 dollar payment for the class rep; and,
5 here's the kicker, rebate certificates for 200 dollars for the
6 purchase of new GM vehicles on behalf of all the class members.
7 Well, the problem of course is that MLC doesn't have any rebate
8 certificates. Therefore, we've negotiated in good faith to try
9 to find a resolution that would, in our words, implement the
10 settlement that had been reached and had been approved by the
11 Court below.

12 So, looking at the class and the notice process, of
13 course they were required to submit claims forms to participate
14 in the class consideration. Approximately 1,800, actually
15 1,878, class members had completed class (sic) forms, and each
16 of these claims forms asserted 1.6 claims. Now, the reason
17 that I say it that way is that these claims forms -- on these
18 claims forms, you were permitted to file more than one claim if
19 you had purchased more than one GM vehicle during the class
20 period. And the reason that I say "on average" is that --

21 THE COURT: Some did and some didn't.

22 MS. ZAMBRANO: Some did and some didn't, but also
23 these claims forms have not been fully vetted, and that means
24 of course that Garden City got the claims forms, but upon the
25 petition date of course they stopped. So then we had to figure

- 24 -

1 out how do you translate that into class consideration. We did
2 a sampling of 200 of the claims forms and came up with the 1.6
3 average. What we did then is multiply that 1.6 times the 1,800
4 claims forms that had been submitted, to get to a total of
5 three hundred -- excuse me, 3,166 claims that had been filed in
6 connection with the class settlement. We took that number; we
7 multiplied it by 175. Not the 200 dollar rebate; 175,
8 considering where we are. And when you multiply those numbers,
9 you get 554,000 dollars, approximately. That is the amount of
10 the class consideration that we're asking Your Honor to approve
11 as part of the settlement, an unsecured claim in the amount of
12 554,000 for the class.

13 Now, I want to note just for the record that of course
14 we are not -- the settlement is not that each class member that
15 participated and submitted a claim would get an unsecured claim
16 in the amount of 175 dollars. I want to make that very clear
17 for Your Honor but also for any class members that are
18 participating today, because what the settlement is, because we
19 had to do it on averages, we took that number, we created
20 the -- or we got to that 554,000 dollar general unsecured
21 claim. Mr. Roda, as part of the settlement, would have the
22 ability to liquidate that claim and distribute it pro rata to
23 the class participants that filled out claims forms.

24 So that's the class consideration. That was the rub
25 in trying to get this settlement implemented in this bankruptcy

1 setting. And we think we've accomplished that as fairly as we
2 can, both for the debtors and for the class.

3 Regarding attorneys' fees, Mr. Roda's firm had
4 previously been awarded 843,000 dollars, approximately, by the
5 Pennsylvania court, but he has agreed to settle with the
6 debtors' estate for a general unsecured claim of approximately
7 526,000 dollars. If the Court has any questions, of course,
8 about the reasonableness of that fee, they should -- Mr. Roda's
9 here and can answer those. I will say that the debtors have
10 agreed to that award as part of the settlement and that it's
11 reasonable as part of this settlement.

12 The third --

13 THE COURT: I assume that that settlement will be
14 received in the same currency that all other general unsecured
15 creditors get --

16 MS. ZAMBRANO: That's correct.

17 THE COURT: -- their distributions.

18 MS. ZAMBRANO: That's correct. It's a general
19 unsecured claim for that amount, not an agreement to pay that
20 amount in cash.

21 THE COURT: Okay. Continue, please.

22 MS. ZAMBRANO: But I will get to cash as part of the
23 settlement, because it is a key point for the debtors'
24 perspective.

25 A third part of the settlement was to make that class

1 representative payment and to reimburse Mr. Roda for the notice
2 costs of approximately 437 dollars. The debtors agreed to
3 resolve those aspects of the proofs of claim for general
4 unsecured claims in their respective amounts. So --

5 And then finally speaking of the cash, the parties
6 resolved the issue also of what to do with approximately 1.2
7 million dollars that was sitting in GM's defense counsel's
8 trust account, because, as I had mentioned, the settlement was
9 fully effected -- finally approved, and in fact it had been
10 fully funded by GM and had just been funded within ninety days
11 of the petition date. So it has been sitting there in the GM
12 defense counsel's trust account. As part of this settlement,
13 that cash would come back into the debtors' estate for the
14 benefit of the creditors.

15 That is the settlement, Your Honor. We think it's
16 fair and reasonable and in the best interest of the estates.
17 And as we have explained in our papers, we ask that the Court
18 approve it under both Rule 9019 and Federal Rule of Civil
19 Procedure Rule 23.

20 Now, before I sit down, I do want to note two things
21 that are unusual here. First regarding notice, as I mentioned,
22 the class here was noticed previously at a substantial expense:
23 over 400,000 dollars. And the debtors did not want to pay for
24 any additional notice. But of course under Rule 23, the Rule
25 does speak to notice to the class. So the question then of

1 course is, is additional notice necessary here. The debtors
2 submit, and have provided authority to the Court, including
3 authority in this jurisdiction, that additional notice is not
4 required. If the Court has any questions in that regard, I can
5 answer them. It's addressed in --

6 THE COURT: I understand the issue.

7 MS. ZAMBRANO: Okay.

8 THE COURT: And I take it that, like something I've
9 only had to do once or twice over the ten years I've been on
10 this job, in addition, I have to approve the settlement not
11 only from its fairness to the estate, a class 9019 analysis,
12 but I have to do 23 -- Civil Rule 23 analysis to make sure that
13 the members of a class aren't being sold down the river.

14 MS. ZAMBRANO: You're correct, Your Honor. And we
15 would ask that the Court -- well, we believe the Court can rely
16 heavily on the state court findings in that regard. There are
17 substantial findings that are in the record here for Your
18 Honor. Our proposed order presumes that you could do that. If
19 you have any other questions, though, Mr. Roda is available to
20 answer those.

21 THE COURT: No, I understand. And am I also correct
22 that I have no objections to the settlement?

23 MS. ZAMBRANO: That is correct, Your Honor.

24 THE COURT: Yes. I'm going to give you the findings
25 you need from both perspectives, Ms. Zambrano, and approve the

1 settlement. And in light of the lack of objection, I'm not
2 going to speak at length on this.

3 While requests to approve settlements of the character
4 we have here are not common, they're not unheard of. I think
5 they go way back to the Wedtech case, if I'm not mistaken, and
6 I've had to do it a couple of times. A settlement of this type
7 requires me to conclude that it's within the realm of
8 reasonableness and that the estate isn't giving away the store
9 and, at the same token, as I put it colloquially before, that
10 the members of the class aren't being sold down the river.

11 Given the practical difficulties in implementing the
12 earlier settlement in any meaningful way in this court,
13 considering you can't stick New GM with this obligation, and
14 the limits on providing value to the class members, it's also
15 very fair to them. I noted the prior approval in the
16 Pennsylvania court system, and find that this settlement is in
17 the sweet spot of being fair both to the estate and to class
18 members.

19 You can submit your order to my chambers at your
20 convenience.

21 MS. ZAMBRANO: Thank you, Your Honor. There is one
22 other part of this that actually relates to the objection. As
23 you probably noted from our agenda, there was an objection that
24 was resolved and of course disclosed in the papers. That is
25 not the type of settlement that, under Your Honor's orders on

1 approval of 9019 motions, is required to be submitted to the
2 Court. But in the interest of full disclosure and notice to
3 the Court, I have copies of that settlement, or I can describe
4 it for Your Honor if you would like me to.

5 THE COURT: Frankly, with so many people in the
6 courtroom, I don't want to burden either you or run so many
7 meters while you do it.

8 MS. ZAMBRANO: Okay.

9 THE COURT: So I'm waiving that opportunity.

10 MS. ZAMBRANO: Thank you, Your Honor.

11 THE COURT: Okay.

12 Mr. Smolinsky?

13 MR. SMOLINSKY: Thank you, Your Honor. Again, Joe
14 Smolinsky on behalf of the debtors.

15 Like Soders, the next matter, the Bryant class action,
16 is the settlement of a class action. But unlike Soders, the
17 Bryant class action is not yet subject to a settlement or a
18 fairness hearing. The class, however, has been certified, and
19 that certification has been brought to and upheld by the
20 Arkansas Supreme Court as well as certiorari denied by the
21 United States Supreme Court.

22 In the Bryant case, in the context of this settlement
23 and this settlement only, we're prepared to respect the class
24 certification and not challenge but, rather, support the filing
25 of a class claim. That in part feeds into the amount of the

1 settlement, among other things. But under the settlement, we
2 are resolving claims that have been asserted against the estate
3 in the amount of approximately one and a half billion dollars
4 in exchange for a settlement pool equal to a general unsecured
5 claim of twelve million dollars.

6 As usual, Your Honor is well ahead of us. The debtors
7 clearly believe that this settlement is above the lowest point
8 on the range of reasonableness under Trailer Ferry, Adelphia,
9 with respect to the estate. But Your Honor is also obligated
10 to consider under Rule 23, which is enabled by Bankruptcy Rule
11 7023, to examine the settlement as it affects the class
12 members.

13 To assist Your Honor in assessing the fairness of the
14 class, class counsel has filed a memorandum of law which
15 attaches some evidentiary support which assesses the settlement
16 from the class perspective.

17 Just to spend a minute on the claims, the -- in the
18 Bryant case, the class, which has already been certified, is a
19 class of owners or subsequent owners of 1999 through 2002
20 1500-Series pickups and utilities originally equipped with
21 automatic transmission and a PBR 210 by 30 drum-in-hat parking
22 brake system utilizing a high-force spring-clip retainer that
23 registered this vehicle in any state in the United States.
24 There are certain opt-outs which are in the papers; I won't --
25 or exclusions from that class, which I won't go through.

1 Under the settlement framework, a class will get a
2 total unsecured claim of twelve million dollars. Also, because
3 we're going to do this in two steps because the settlement has
4 never been approved, we're going to have an initial preliminary
5 hearing and then we're going to have a final fairness hearing
6 at a future date. We've agreed that the Court would estimate
7 today the claim, for bankruptcy purposes, at twelve million
8 dollars so we can plan for that under our plan, subject of
9 course to parties' rights under 502(j) if the settlement
10 ultimately proves not confirmable.

11 THE COURT: So this would be not just for the purpose
12 of a distribution reserve but also subject to 502(j) for class
13 allowance -- for claim allowance?

14 MR. SMOLINSKY: That's correct, Your Honor.

15 THE COURT: Okay.

16 MR. SMOLINSKY: And we would ask that the Court enter
17 a separate order estimating this claim.

18 Now, like Soders, the claims here are fairly small.
19 And therefore we're concerned that if we just made a
20 distribution to class members that, because of fractional share
21 issues, they would get nothing. So what we've created is an
22 authorization of class counsel to either sell the claim once it
23 gets allowed, or to sell the securities that come out of --

24 THE COURT: In essence, to monetize the claim and make
25 it more capable of being distributed in small checks to

1 small -- to regular people --

2 MR. SMOLINSKY: That's right.

3 THE COURT: -- ordinary people?

4 MR. SMOLINSKY: That's right, Your Honor.

5 THE COURT: Um-hum.

6 MR. SMOLINSKY: So the claim pool will be established,
7 the cash pool. We are also providing 100,000 dollars in cash
8 to defray the costs of noticing. Under the settlement, we're
9 going to provide the individual specialized notice to class
10 members but, in terms of publication and other administration,
11 we're going to provide class counsel with 100,000 dollars of
12 cash. To the extent that that cash is not needed, it would be
13 returned to the estate after the class has been administered.

14 In terms of fees and costs, class counsel is entitled,
15 under an engagement letter, to a third of any settlement, or
16 four million dollars, whichever is greater. The way the fees
17 are going to work, if Your Honor's inclined to approve this
18 settlement, is that they would get a third of the cash pool
19 that's created. To the extent that all claimants get paid in
20 full, and by "full" I don't mean the amount that's initially
21 capped but their full claim, and I'll go through that in a
22 minute, then in that case they would seek to receive additional
23 fees up to the four million dollars if there's money left over.

24 Your Honor, it's in the papers, I won't belabor it,
25 but under the settlement framework, there are three different

1 tiers of claims: some people who actually expended money out
2 of pocket during the warranty period, and those are not subject
3 to any cap; there's a second tier of those within the two years
4 after the warranty expired that incurred expenses, and those
5 claims are capped by 150 dollars; and then those that incurred
6 out-of-pocket expenses after two years after the warranty
7 expired, and they would be capped at 75 dollars. The reason
8 why those tiers were put into place, it was part of a
9 mediated -- an attempt to mediate the resolution, and everyone
10 thought that that was a fair way to adjust for people who were
11 early on in the warranty period that incurred those costs.
12 But, again, those caps, the 75 and 150, don't count for
13 purposes of seeing whether class counsel could get additional
14 funds. Those claims would have to be satisfied in full before
15 class counsel could receive any more compensation.

16 So, Your Honor, we are planning on making a -- after
17 this -- after the preliminary approval, we're planning on
18 sending notice to approximately 17,000 potential class members.
19 That information, that list, was derived by New GM in
20 connection with parties who in our system would show that they
21 had warranty claims during that period. We had thought that
22 we'd have the list by now; we don't. We expect to have it
23 soon. And as a result, we have to adjust the timeline and the
24 noticing so that we're not required to send out notice within
25 the next few days. It'll all be triggered off when we have the

1 list, and we'll set up the fairness hearing to provide enough
2 notice.

3 THE COURT: Which is, in substance, a mailing list
4 that you're going to get the stuff from New GM that enables you
5 to do that?

6 MR. SMOLINSKY: That's right, Your Honor.

7 THE COURT: Um-hum.

8 MR. SMOLINSKY: And as I said, we're going to be
9 responsible for sending out those approximately 17,000 notices.
10 Class counsel will be responsible for publication notice, which
11 will be published three times in the Monday to Thursday edition
12 of USA Today. It's a one-sixteenth page ad for the class.

13 Your Honor, I have a chart of the timeline for the
14 settlement. It may make sense to just hand it up and quickly
15 walk through it.

16 THE COURT: Sure.

17 (Pause)

18 MR. SMOLINSKY: What we would anticipate is, upon
19 receiving the preliminary approval, we would pay the 100,000
20 dollars into escrow, and class counsel would establish a 1-800
21 number for class members. We would then mail and publish the
22 notice as soon as practicable but at least forty days before
23 the fairness hearing that we'll have before Your Honor, and by
24 publication within fourteen days. And we'll include in that
25 notice the fairness hearing date.

1 There'll also be a period of time for parties/
2 claimants to file claims, and they'll have up to thirty days
3 after the fairness hearing, whenever that's scheduled, in order
4 to complete the submission of claims. There'll be a fairness
5 hearing, at which time -- we were hoping that it would be
6 September 24th but, in view of the delay in getting the list,
7 we would seek the date from chambers for that hearing.

8 And then finally we would have a distribution date,
9 assuming that there's a final approval of the settlement. As
10 soon as practicable after the claims deadline is over, we would
11 start mailing checks to claimants after the claim has been
12 monetized.

13 So that's the anticipated timeline. We believe that
14 this settlement is a very fair settlement under the
15 circumstances: It provides the potential claimants with a
16 distribution; it avoids for them the significant risks of
17 decertification under CAFA and other federal certification
18 rules; and it spares the estate from a significant amount of
19 cost that would otherwise be spent in litigating this class
20 action.

21 THE COURT: Okay. And am I correct that there's no
22 objection to this, at least insofar as we've gotten to this
23 point?

24 MR. SMOLINSKY: That's correct, Your Honor.

25 THE COURT: Okay. It's approved. It's fine.

1 MR. SMOLINSKY: Okay. Okay, I'm now going to quickly
2 run through the general omnibus claims matters on the docket.
3 E on the agenda is the seventh omnibus objection. We had one
4 remaining claim, Casmalia Resources. We've entered into a
5 stipulation and we'll be handing it up to Your Honor right
6 after the hearing, and that fully resolves omnibus motion
7 number 7.

8 With respect to the debtors' fifteenth omnibus
9 objection, there were two remaining outstanding matters; one is
10 Birdsall, and that will be adjourned, although we do have a
11 resolution of Birdsall and we'll be submitting a stip when it
12 becomes available. With respect to the IRS claims, they have
13 agreed to withdraw those claims pursuant to a stipulation.
14 That will resolve and lead to the elimination of approximately
15 two and a half billion dollars of claims that were asserted by
16 the IRS --

17 THE COURT: With a B?

18 MR. SMOLINSKY: With a B.

19 THE COURT: Um-hum.

20 MR. SMOLINSKY: -- as a result of that withdrawal.
21 And after submission of the Birdsall stip, that motion will be
22 resolved. But as I said, we're going to adjourn it until the
23 Birdsall stip is finalized.

24 G is the debtors' seventeenth omnibus. We have a
25 variety of responses -- these are tax claims -- a variety of

1 responses that still remain, one of them dealing with the state
2 of Pennsylvania. They finally agreed that we could expunge
3 their claims, so we'll be submitting an order with respect to
4 the Pennsylvania claims, and the rest of the motion will be
5 adjourned as we continue to work through the tax issues.

6 Number -- letter H is the debtors' twentieth omnibus.
7 Again, that involves the state of Pennsylvania as the only
8 remaining claim. They've agreed that we could enter an order,
9 and that will fully resolve the twentieth omnibus objection.

10 I is the debtors' twenty-first omnibus. We've
11 resolved our issue through the withdrawal of a claim by
12 Tomball. So, actually that motion could just go off calendar;
13 it's fully addressed.

14 Now we get to the new motions that are on for the
15 first time today. J is the twenty-fifth omnibus objection.
16 There are no responses, so we would like to go ahead and have
17 an order entered.

18 THE COURT: Granted.

19 MR. SMOLINSKY: K, twenty-sixth omnibus, no responses
20 again. We'd like to get it entered.

21 The twenty-seventh omnibus objection, there are a
22 number, as you could see on the agenda, of responses. We'd
23 like to go forward, except with respect to those that have
24 formally or informally responded.

25 THE COURT: All right, so --

1 MR. SMOLINSKY: And the rest will be adjourned.

2 THE COURT: -- so you're going to kick those which
3 were the subject of responses, and you win by default on the
4 remainder?

5 MR. SMOLINSKY: That's correct, Your Honor.

6 THE COURT: Yep, you got it.

7 MR. SMOLINSKY: Same with -- and the twenty-eighth
8 objection, adjourning it with respect to Acument and the rest,
9 we'd like default.

10 Debtors' twenty-ninth objection, there are two
11 responses. Again, we're going to adjourn with respect to those
12 two.

13 The thirtieth omnibus objection, same thing.

14 P, the thirty-first omnibus objection, no responses;
15 thus, we'd like that order entered.

16 Debtors' thirty-second omnibus, too, is to be
17 adjourned.

18 Thirty-third omnibus objection, no responses.

19 Thirty-fourth we've withdrawn with respect to one
20 claimant who submitted additional information about the claim.
21 And the rest, we ask that an order be entered.

22 Thirty-fifth omnibus, again, one that's been -- we're
23 going to withdraw the motion as to -- and move forward with the
24 others.

25 Thirty-sixth omnibus, no responses.

1 Thirty-seventh omnibus, we've agreed to withdraw the
2 motion with respect to England and Reynolds. The remaining
3 matter will go forward. And it'll be adjourned with respect to
4 the other two objectors; all reflected in the agenda.

5 And finally, the thirty-eighth omnibus objection,
6 adjourned with respect to the formal and informal responses.

7 THE COURT: Okay. That game plan's acceptable across
8 the board.

9 MR. SMOLINSKY: Thank you, Your Honor. The next
10 matter on the calendar, it's letter X, is the motion of Dean
11 Trafalelet, future claims representative, for payment of fees and
12 expenses.

13 THE COURT: All right, do I see Mr. Esserman on the
14 phone?

15 MR. ESSERMAN: Yes, Your Honor. This is Sandy
16 Esserman. I have a very brief presentation.

17 THE COURT: Go ahead.

18 MR. ESSERMAN: Dean Trafalelet, a retired district court
19 judge, was appointed FCR by this Court's order dated April 8th,
20 which was the date of his appointment. GM had approached
21 Retired Judge Trafalelet in November of 2009 to serve as future
22 claims representative. He started serving in that capacity and
23 he incurred fees and expenses from November till deployment by
24 court order dated April 8th. The total amount of unpaid fees
25 and expenses were \$21,587.50, expenses of \$1,464.22. Most of

1 those expenses were incurred in state court with him coming to
2 the hearing of his appointment, and most -- the vast bulk of
3 the expenses -- of the fees were incurred in the calendar year
4 2010 and not in 2009. There's only 2.2 hours that were
5 incurred in November and December of 2009.

6 So the request, which I believe is an unopposed
7 request by GM, I think they felt they couldn't pay him without
8 court order, and I think that GM is correct on that, to either
9 enter an order establishing November 13th, 2009 as the
10 effective date of his appointment or presently award him that
11 fee under 2 -- under 503(a) or (b). Thank you.

12 THE COURT: All right. Mr. Esserman, I'm correct that
13 I have no objection?

14 MR. ESSERMAN: You are correct.

15 THE COURT: All right, any desire on the part of the
16 U.S. Trustee's Office to be heard? Mr. Velez-Rivera, good
17 morning.

18 MR. VELEZ-RIVERA: Good morning, Your Honor. We take
19 no position with respect to this request.

20 THE COURT: Okay. I'm going to approve the request.
21 I think I should do it consistently with the ruling I issued on
22 the somewhat analogous issues involve the Caplin & Drysdale
23 firm.

24 Mr. Esserman, give me a simple order that says -- try
25 to fashion it so that it stays true to what I ruled before.

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1 But as long as it's not inconsistent with that, I'll give you a
2 little leeway for doing it. This is a focused discussion --
3 decision on my part but, given the lack of objection, I'm not
4 going to speak at length to it today.

5 MR. ESSERMAN: Thank you, Your Honor. We will so
6 prepare and so submit.

7 THE COURT: Very good. Thank you. Oh, needless to
8 say, it's got to be run past the U.S. Trustee's Office before
9 it's submitted to me.

10 MR. ESSERMAN: And we'll run it by GM, as
11 historically, also.

12 THE COURT: Fair enough. Thank you.

13 MR. ESSERMAN: Thank you.

14 THE COURT: Okay, Mr. Smolinsky.

15 MR. SMOLINSKY: Your Honor, that leaves one remaining
16 uncontested matter. This is a motion to approve a settlement
17 with the International Association of Machinists and Aerospace
18 Workers, and the International Brotherhood of Teamsters. Your
19 Honor is aware of the splinter union motions that have been
20 before Your Honor before. These two unions have elected to opt
21 into the prior settlement which allows them to share in a one
22 billion dollar unsecured claim pool, as well as to get reduced
23 but continuing retiree benefits and life insurance from New GM.

24 So these settlements have already been contemplated by
25 the overall splinter union settlement, and this agreement was

1 procured in good faith and at arm's length and we'd ask that it
2 be approved.

3 THE COURT: You bet. I'm very glad that you were able
4 to find a way to come to a meeting of the minds with those guys
5 and so they wouldn't be left out. Absolutely approved.

6 MR. SMOLINSKY: Thank you, Your Honor.

7 THE COURT: Okay, are we now up to AP Services?

8 (No audible response)

9 THE COURT: All right, folks, I have no tentatives on
10 either of these motions, although most of the time I do, and
11 here's why: Turning first to the unpaid portion of the
12 incentive payment, given the case law in this district and
13 elsewhere on incentive payments of this type, even in much
14 smaller cases, and I think the original motion showed nine of
15 them involving smaller requests where quite substantial amounts
16 were awarded in cases which for the most part were materially
17 smaller, this request by AP Services should have been a slam
18 dunk, but there was at least seeming noncompliance with earlier
19 orders, the deficiencies of which were articulated by the U.S.
20 Trustee's Office. And while it now appears that the
21 information that should have been provided at an earlier time
22 was provided at least to the U.S. Trustee's Office, if I read
23 the papers right, that was only eight days ago and 4,000 pages
24 were then delivered to the U.S. Trustee's Office for their
25 review in a period of only eight days.

1 Now, the debtors raised a pretty good point in their
2 reply, which is, do we indeed have to review time entries after
3 the sale when the reward is for services that were at least
4 seemingly earned at the time of the sale in July 2009. I'll
5 need you folks, especially any objectors, to focus on that, to
6 the extent that I deal with it today. But I guess the question
7 that I need people to help me with is should I and other judges
8 be saying never mind to the requirements of retention offers --
9 orders, excuse me, whenever a professional does a good job,
10 which at least seemingly is the case in most of the
11 applications that I have.

12 So even though, subject to your rights to be heard, AP
13 Services did at least a very good job, and arguably announced
14 an outstanding job and earned its pay, to what extent should I
15 be dealing with this matter today when compliance came so late,
16 if in fact it's been complied with even to this point vis-a-vis
17 the public filing of what the order required?

18 On the second matter, I'm going to give you all my
19 concerns now, although I think I want to deal with the motions
20 separately. I have a situation that I haven't had to encounter
21 too much where the papers say to me that the rewriting of the
22 existing agreement isn't going to come at the expense of the
23 unsecured creditor community. And I'll certainly hear the
24 creditors' committee's concerns, but I would have assumed that
25 the kind of status report that we got today, especially if like

1 status reports were to come forward in the future by the
2 debtors or counsel, which is probably better capable of
3 reporting to the creditor community than AP Services would be,
4 would make the creditors' committee's concerns turn out to have
5 been satisfactorily resolved.

6 But, you know, I looked at those motion papers even
7 with the reply, even with that chart, those couple of pages,
8 which, to be candid, I could follow to only a very limited
9 extent. I have difficulty seeing how I have anything in the
10 record to understand the debtors' business judgment. And while
11 presumably the deficiency could be cured by an affidavit or if
12 everybody who was involved consented to some resolution, my
13 case management order says that when a factual matter is put in
14 dispute, I need declarations. Probably wouldn't need an
15 evidentiary hearing, unless people wanted to cross-examine.
16 But I cannot, for the life of me, see how -- based on anything
17 that's been submitted to me, how the estate is saving the money
18 that it proposes to be saved.

19 So unless the fact that the government picking up the
20 tab for it makes my review function academic, I think I need a
21 supplemental affidavit and I have to continue the motion, but
22 help me on that.

23 By the way, when you're helping me on that, we got a
24 double entendre. Talking about the amended agreement, when you
25 got two agreement -- two amendments that were -- took place

1 that aren't material to this, let's just talk about the present
2 arrangement in the proposal. Right now in the state of play,
3 it looks to me like a discount that was going to be given has
4 been proposed to be eliminated, which at least seemingly would
5 result in something in the ballpark of 5.3 million being
6 retroactively awarded to Alix -- excuse me, AP Services. And
7 I've been told that that's going to be made up for, but I don't
8 understand how. And I don't have an explanation of the
9 business judgment. It could very well be that there's a quite
10 a good one. But unless I can just say it's somebody else's
11 problem, because the government is picking up the tab and it's
12 not going to affect the creditors in this case, I need help in
13 that.

14 Now, if my questions are not based on the most current
15 state of play, by all means tell me that. And if I'm being
16 unduly cautious, you can tell me that as well. But that's what
17 I need parties to address.

18 Who's going to take the lead on this? Mr. Smolinsky,
19 come on up, please.

20 MR. SMOLINSKY: Your Honor, let me just have one
21 moment?

22 THE COURT: Yes, certainly.

23 Mr. Mayer, I'm going to hear you at some point. Do
24 you want to take a second, though, after Mr. Smolinsky's talk,
25 to determine whether your remarks come before or -- better come

1 before or after his?

2 MR. MAYER: Your Honor, I just want to confirm your
3 understanding that the disclosures made did in fact satisfy our
4 objection.

5 THE COURT: Okay. Thanks.

6 MR. WILLIAMSON: Your Honor, this is Brady Williamson.
7 Just a note that I'm appearing by phone. In this little
8 interlude here, I wanted to remind the Court of that.

9 THE COURT: Okay. I saw you on the list, Mr.
10 Williamson. Before we're done, I'll give you a chance to be
11 heard if you want to be.

12 MR. WILLIAMSON: Thank you.

13 THE COURT: Okay, Mr. Smolinsky.

14 MR. SMOLINSKY: Thank you, Your Honor. Joe Smolinsky
15 for the debtors.

16 (Noise broadcasting over loudspeakers)

17 MR. SMOLINSKY: Let me begin by just introducing Mr.
18 Al Koch who's in the courtroom, and Ted Stenger --

19 THE COURT: Did I hear your testimony on the
20 liquidation analysis about a year ago?

21 MR. KOCH: Yes, sir.

22 THE COURT: Yeah, I remember that. Thank you.

23 (Noise broadcasting over loudspeakers)

24 THE COURT: I do need quiet on the phone, for those
25 people who are that way. The wrestling of the papers gets

1 magnified when it's heard here.

2 (Noise from phones broadcasting over loudspeakers)

3 THE COURT: And it's continuing.

4 Go ahead, Mr. Smolinsky.

5 MR. SMOLINSKY: Thank you, Your Honor. Maybe I could
6 start with the amendment issue and the move to the success fee.

7 (Noise from phones broadcasting over loudspeakers)

8 MR. SMOLINSKY: With respect --

9 THE COURT: You know, pause please, Mr. Smolinsky.
10 CourtCall, are you on my phone?

11 (No audible response)

12 THE COURT: CourtCall, I want you to mute everybody
13 until it's time for Mr. Williamson to speak.

14 Go ahead, Mr. Smolinsky.

15 MR. SMOLINSKY: Your Honor, with respect to the
16 amendment, I'd like to just provide a bit of background. And I
17 understand that if there are questions about the truthfulness
18 of this, we can move beyond to affidavits or an evidentiary
19 hearing, but I just wanted to provide Your Honor with a bit of
20 background.

21 It's been clear from almost the inception of the case
22 that the fee arrangement that was negotiated between AP
23 Services and U.S. Treasury during the sale process contained
24 incentives that were unhealthy to the dynamics of the case
25 moving forward. And in fact, Treasury came to the

1 understanding that the fee arrangement that was reached was
2 actually an obstacle to closing out the wind-down, for two
3 primary reasons. First, the states didn't like the fact that
4 AP Services were getting paid on a percentage of monies that
5 were returned to the U.S. Treasury. Thus, from their
6 perspective, less contributed to the environmental trust.
7 Second, the bonus that was paid if the case was confirmed by
8 May of 2010 created anxiety among the states that they had to
9 rush to a settlement or they would find themselves in the
10 center of litigation.

11 So Treasury actually had -- initially they had desire
12 to incentivize AP Services to resolve the case as quickly as
13 possible and return the maximum amount of money to the federal
14 government. That ultimately didn't necessarily end up being
15 the goals, and therefore U.S. --

16 THE COURT: Well, this sounds like a reprise of
17 something that I think I raised with the counsel for the U.S.
18 government a year ago when I said 'Whose hat are you wearing?
19 You wearing the EPA's hat? You wearing Treasury's hat?' And I
20 was told 'All of the above,' and they seem to be inconsistent
21 with each other.

22 MR. SMOLINSKY: That's correct, Your Honor. So it was
23 actually the federal government who came back to us and said we
24 need to change the fee structure. So, so as this Court's not
25 left with the impression that this fee arrangement was

1 negotiated in the last few weeks, this amendment has been
2 floating around for a long time. After those conversations in
3 the very early part of 2010, terms were finally reached with
4 Treasury in the March time frame. And it's our understanding
5 that, at the time, Treasury notified the states that these
6 changes were being made in order to remove the tensions that
7 existed.

8 It was then formally presented to the board of MLC,
9 who considered it and approved it. Then it was circulated to
10 the committee for their comments, and the committee approved
11 it, and then to Weil Gotshal to process.

12 In the interim, AP Services had previewed the terms of
13 the amendments to the U.S. Trustee in an in-person meeting that
14 was held in May, and then again at an in-person meeting between
15 the debtors and U.S. Trustee in July. They again -- this was
16 after the motion was filed. They spoke to the U.S. Trustee and
17 offered them the opportunity to discuss any concerns that they
18 had.

19 There doesn't seem to be any substantive objection to
20 the amendment, although there's a lot of focus on the
21 retroactive adjustment to the discount.

22 THE COURT: Well, if the retroactive adjustments to
23 the discount were offset by other savings, assuming that I got
24 the responsibility to deal with it if it doesn't gore the ox of
25 anybody other than Treasury, that could be addressed; it's just

1 that I don't know yet how that happens.

2 MR. SMOLINSKY: Well, let me premise my comments by
3 saying that I have never once, throughout the whole history of
4 the case, saw AP Services do anything that was not clearly in
5 the best interests of the estate. But --

6 THE COURT: Nor have I. But basically what I have
7 here is a business judgment decision, assuming that I got to
8 make a business judgment decision, and that simply requires the
9 estate, on a relatively easy hurdle to climb, to give me the
10 showing.

11 MR. SMOLINSKY: Your Honor, maybe we can walk through
12 the chart that was attached to the reply.

13 THE COURT: Give me a minute.

14 (Pause)

15 THE COURT: Okay.

16 MR. SMOLINSKY: What this chart does is it compares
17 the incentive fee proposal from what had existed, on the left
18 side, to how it's being revised. So if you look at the
19 first -- that nine- to ten million dollars, that's additional
20 payments out to AlixPartners, and that's a projection as to
21 what the fifteen percent would be through December of 2010.
22 That's an extension of the 5.8 million or 5.6 million through
23 March of 2010.

24 The next was a bonus based on where unsecured claims
25 came out; that hasn't been changed. The bonus, if we confirm

1 by May -- we've talked about that -- that was agreed by
2 Treasury and Alix -- AP Services to be eliminated.

3 THE COURT: Well, wait. For not having confirmed by
4 May 28th?

5 MR. SMOLINSKY: That's right. And you have to
6 understand, Your Honor, that U.S. Treasury came to the debtors
7 and said 'Please don't do anything. We'd much rather have a
8 consensual deal. We want to spend more time talking to the
9 states. We think we can get there. We understand that it's
10 going to -- that we're asking you to take away a significant
11 bonus that you would have earned had you immediately moved into
12 the confirmation stage of the case.' And that was part of the
13 ongoing dialogue between the debtors and Treasury.

14 THE COURT: But where I'm confused, Mr. Smolinsky, is
15 that, while that provision was being excised, I thought there
16 would be an alternative payment of a new fee upon confirmation
17 which, barring something unforeseen, is going to happen
18 sometime in the fall of this year.

19 MR. SMOLINSKY: That's right, Your Honor. So if you
20 see on the right side, you'll see that there's an addition of
21 seven million dollars which is paid on confirmation of the
22 plan.

23 THE COURT: All right, so the 2.5 that would have been
24 triggered by May 28th gets replaced by 7.0 that will be paid,
25 let's say for sake of argument, on December 31st?

1 MR. SMOLINSKY: That's fair, if you want to compare
2 that to -- the big elimination was a provision which was really
3 the quid pro quo for AP Services to discount their fees.
4 They're not usually in the habit of discounting the fees, but
5 the quid pro quo, and this goes back to the initial view of
6 Treasury that they wanted to get back as much money as
7 possible, was that they would -- AP Services would get fifteen
8 percent of any dollars that went back to Treasury. And based
9 on what the estimates are of money that will go back to
10 Treasury either at confirmation or on the effective date or
11 after when it's not used for the wind-down, the estimate is
12 that that 15 percent will equal 15 million on the low end to
13 21.6 on the high end.

14 And, Your Honor, I would -- you know, I would propose
15 that that's somewhat of a conservative number, because, in
16 reality, when you look at what actually the estate believes the
17 environmental numbers to be, if it was left to simply an
18 estimate of the administrative claims for environmental
19 remediation, that that number that would be returned to the
20 Treasury could be significantly higher. And so I think the
21 21.6 on the high end may actually be conservative.

22 But if you look at the range and you look at the 13
23 million to 26.1 million that's being eliminated, and you take
24 the midpoint, the midpoint of that range is 19.6 million
25 dollars. If you add up all of the incentives under the new

1 proposal, the total range goes from 12 million to 14.5. The
2 midpoint of that is 13.3 million.

3 So that is why the conclusion was reached and MLC, in
4 its business judgment, determined that this new proposal, the
5 amendment, was not disadvantageous to the estate, assuming that
6 what happens to the estate is necessarily the relevant part as
7 opposed to the parties paying for it. But there is a
8 significant savings in this case if you use the midpoint 6.3
9 million dollars that the estate is saving, by moving off of the
10 original fee schedule to the new one.

11 So just stepping back to the almost daily calls
12 between U.S. Treasury and the debtors, you know, at some point
13 when Treasury came to MLC and said 'Good news: We think we
14 could resolve the environmental claims and get the states on
15 board, but we're going to have to put tens of millions of
16 dollars into redevelopment property,' which arguably is not a
17 requirement of the estate, AP had every reason to say 'Wait a
18 minute, fifteen percent of that money is mine. And we're not
19 agreeing to spend that money for that purpose; we'd rather give
20 it back to Treasury.' But of course that response never came,
21 and the reason why it never came is because on both sides they
22 were consummate professionals, both at Treasury and at AP
23 Services, and they understood that what was important was
24 getting a deal done. But what was also important is to have
25 some sense of fundamental fairness as to how the process would

1 play out, and that in fact led to the terms upon which we
2 believe the ultimate payouts would be less, but the entire
3 structure of the incentives fees would be changed.

4 Looking ahead, we're now in the weeds of the plan
5 process. The creditors' committee will say 'We need X millions
6 of dollars to pursue this litigation, and Y millions of dollars
7 to pursue that litigation.' And the fact that, under the
8 existing agreement, AP Services gets fifteen percent of
9 anything that's not spent creates an unnecessary friction in
10 trying to get to the right answer.

11 THE COURT: So this gives the creditors' committee a
12 little extra liquidity to do the things they think they need to
13 do?

14 MR. SMOLINSKY: Subject of course to U.S. Treasury's,
15 you know, say on that, because ultimately it is their money.
16 This is all of their money. But U.S. Treasury is working
17 cooperatively with us to get to the right result. And MLC is
18 agreeing to put more money into the environmental remediation
19 than is necessary, in order to get a deal done, and, under the
20 original fee agreement, that would be a hit to AP Services.
21 And the committee is asking for things under the plan which
22 cost money, and that impacts AP Services.

23 So that's why the dynamic -- and, you know, we've been
24 before Your Honor on claims reconciliation forever, and we'll
25 continue to be for the next year or two. And while I've --

1 again, I've never seen AP Services be impacted at all by the
2 notion that if they spend a dollar on litigating a claim, it's
3 less money that they have in their pockets. And there's a
4 total disconnect under our plan between dollars that are spent
5 in litigating, and ultimately distributions that go out,
6 because the distributions -- the cost of litigation is not
7 netted out of the claims distribution.

8 So everyone's trying to be fair. And this type of
9 provision where fifteen percent of every dollar that is spent
10 on claims reconciliation goes into the hands of AP Services is
11 just inappropriate. So -- and we've recognized this forever.
12 It hasn't impacted the case, but there's no reason why that
13 type of dynamic should stay in place.

14 So, you know, hopefully with this explanation of the
15 savings and the appropriateness of taking those types of
16 incentives and dynamics out of the picture, clearly it supports
17 the business judgment of doing this deal. And I noted in our
18 reply that of course while AP Services is managing the affairs
19 of MLC, the board, which are all independent members, are
20 involved in these issues, have weighed on them and have
21 approved them, in the debtors' business judgment.

22 So I think that's all I really have to say on the
23 amendment.

24 THE COURT: Let's give other people a chance to be
25 heard on the amendment, since you focused solely on that, and

1 since I want to stay focused, and then I'm going to ask you to
2 come up again to deal with the -- you or AP, to deal with the
3 remainder of its success fee. I want to hear first from the
4 U.S. Trustee's Office; then I'll hear from Mr. Williamson.

5 Mr. Velez-Riv --

6 Oh, forgive me. Mr. Mayer, I think you should
7 probably come in now.

8 MR. MAYER: Thank you, Your Honor. First, I want to
9 confirm what Mr. Smolinsky said and give a little background
10 which may help the Court. The original terms of the AP
11 Services retention were negotiated in a three-way discussion,
12 and one of the ways was with the creditors' committee itself.
13 We were very concerned about deadlines for exiting the case,
14 and that May 28th, 2010 date was important to us. And we were
15 among the constituents who were convinced that the May 28th
16 deadline wouldn't be met, through no fault of Alix's, that that
17 was entirely Treasury-driven. And the problem with a deadline
18 that can't be met is it becomes kind of meaningless.

19 Mr. Smolinsky's description of the discussion on the
20 fifteen percent issue is absolutely correct. And to just put a
21 little meat on the bones, there are three substantial areas
22 that are right now currently under negotiation; we've started
23 talking with Treasury about them in terms of a final budget for
24 post-effective date feasibility; one is, if asbestos litigation
25 is continuing post-reorganization, which it might, that's an

1 area where Treasury is vitally concerned as well, because in a
2 sense we're playing with some of their money. There's a
3 provision in the deal where, if claims exceed a certain amount,
4 an additional two percent of GM -- New GM equity is allocated
5 to unsecured creditors to partially offset the dilution. So
6 that's a live issue. That makes the asbestos litigation a
7 potential source of expense that must be funded, to the extent
8 it happens after confirmation. We hope we'll get a settlement
9 or resolution before then, but you don't know.

10 Second is the term loan litigation; that's before Your
11 Honor sub judice. I won't deal with that except to note that
12 that's a real litigation. And no creditors' committee can walk
13 away from a billion-five avoidance action; it just can't
14 happen. My firm isn't handling that; I won't address it
15 further.

16 The third is the objection to the Nova Scotia ULC
17 claim, which is about a billion dollar claim. And again my
18 firm isn't handling that either.

19 But those are the three, sort of, big-ticket items
20 whose budgets need to be negotiated over the course of the next
21 month.

22 THE COURT: Forgive me, Mr. Mayer. I know well about
23 the billion and a half buck avoidance action, which Butzel Long
24 is handling. But I don't think I've heard about the other one
25 since back in the days of the original sale hearing. That

1 involved -- or if there has been, I'm not paying enough
2 attention to matters on my desk. That involved a payment to
3 some bondholders shortly before the filing, if I'm not
4 mistaken?

5 MR. MAYER: Well, the exact date is still, I think, a
6 matter of some contention. This is a claim objection, Your
7 Honor, because there were three -- there were several elements
8 to what happened with the Nova Scotia bondholders: One was a
9 payment that we are not seeking to recover; the other was a
10 stipulated agreement on the allowed amount of their claims
11 against the estate, and an objection to the allowed amount of
12 their claims has been filed by the creditors' committee, and I
13 believe there is a hearing set down in November on that matter.

14 THE COURT: Uh-huh. And you got a special counsel for
15 the creditors' committee carrying the ball on that one?

16 MR. MAYER: Well, yes, Your Honor. One of the major
17 participants in that litigation was Aurelius, and I felt it was
18 inappropriate for Kramer Levin to appear adversarially --

19 THE COURT: Well, I certainly understand that. But
20 maybe it's because I don't read briefs until a few weeks before
21 they're teed up for an argument, but do you know the -- I know
22 you're not carrying the ball on that. Do you know what the
23 state of the briefing is on that?

24 MR. MAYER: I don't know that briefs have been filed.
25 This is in the nature of a 502(d) objection and equitable

1 subordination count. It will be briefed. I don't -- I think
2 it's inappropriate for me to comment.

3 THE COURT: Okay.

4 MR. MAYER: So, returning to the theme of today's
5 matter, the committee -- the committee's real concern was that
6 we used to have a date that people in the outside world could
7 look at and say 'Okay, that gives me some sense as to when
8 things might happen.' That date slipped; nobody's fault. And
9 we were concerned that there was nothing out in the public
10 domain, telling people when things might happen. And yesterday
11 we had a meeting with Debtors' counsel; it was very productive,
12 and they told us what they were going to say on the record
13 today. We view the prediction of a filing in the next couple
14 of weeks, a hoped-for hearing at the end of September, and a
15 hoped-for confirmation hearing at the end -- by the end of the
16 year -- those were the disclosures we were looking for, and it
17 satisfies the issues that we raised with our objection. And
18 therefore we have no objection to the Alix fees. We think Alix
19 has done a good job.

20 THE COURT: Okay. Thank you.

21 Now, Mr. Velez-Rivera, it's going to be your turn
22 next. Actually, before you speak, and I'm making you pop up
23 and down like a yo-yo --

24 Mr. Jones, you're U.S. Attorney's Office and I'm
25 assuming that, just as in the past, you represent the hydra-

1 headed United States government.

2 MR. JONES: That's correct, Your Honor.

3 THE COURT: Did anything anybody said about any of
4 your heads in your hydra, especially Treasury -- was it either
5 inaccurate or incomplete?

6 MR. JONES: Your Honor, nothing -- first off, let me
7 say, I was authorized and instructed to come here and simply
8 say that the government, including Treasury, has no objection
9 to the fee request. That has been aired within the government
10 and is specifically simply not objected to.

11 I will say I'm not in a position to vouch for or
12 dispute the detailed recitation that Mr. Smolinsky provided.
13 Nothing jumped out at me as incorrect. And I --

14 THE COURT: Well, if you knew anything was incorrect,
15 I -- irrespective of what Secretary Geithner or anybody else
16 tells you to say or not say, I would ask you -- if you knew
17 something he said was inaccurate, you got to tell me.

18 MR. JONES: Your Honor, I absolutely would. I
19 absolutely would. I'm just saying I can't vouch for all the
20 details, but the thrust of it is correct. And I think, most
21 fundamentally, for purposes of the application, the fifteen
22 percent discount mechanism that was in place, I can confirm,
23 did become a source of, at least, incentives that didn't match
24 ultimately where the government felt this case needed to go.

25 The one thing that gave me pause in Mr. Smolinsky's

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1 recitation is the suggestion that there's a governmental desire
2 to fund the environmental settlement trust that is being
3 contemplated at a level higher than is required. And I think
4 really the way to look at it, and the way we do look at it, is
5 to say that the government has a strong view as to the degree
6 of cleanup and remediation and associated activities that are
7 required. Often that's a purely adversarial and contentious
8 situation with a debtor that has no governmental involvement,
9 and here there is a governmental interest in having a bit more
10 of a collaborative relationship. And certainly the government
11 doesn't want to instigate an incentive to increase the degree
12 of pushback that the debtor, in exercising its fiduciary
13 duties, should appropriately exercise.

14 THE COURT: Yeah, and as you have a little mini-
15 conflict in that area, so do I as a judge, because I have
16 several federal statutes and several federal interests that
17 need to be accommodated.

18 MR. JONES: Your Honor, that's absolutely correct. I
19 also want to comment on just that: the concern that the Court
20 has raised previously and again suggested today that the
21 government has to navigate competing interests. Certainly we
22 represent EPA, which has a very powerful remediation interest,
23 and Treasury.

24 We continue -- the answer to the question "Who do we
25 represent" continues to be both, as well as other federal

1 agencies. And I want to assure the Court we're navigating that
2 with extreme care. Both agencies, because it is predominantly
3 those two, have a very active engagement and full
4 participation, and we're operating at a very carefully worked-
5 out consensus basis among those two agencies. The process has,
6 as I said, been very intensive, very involved; a lot of very
7 active interaction. And since we are a unitary government
8 after all, answerable to -- you know, ultimately answerable to
9 the President, we have taken great pains to ensure that
10 consensus is reached and then a position advanced that speaks
11 for all of the United States government. That remains the case
12 both with respect to the fee application and all other aspects
13 of the case.

14 So, I mean, that's a high-level comment, but it's
15 something I really want to underscore for the Court and for all
16 parties to understand. I'm not sure -- Your Honor, other than
17 that, the -- you know, I'm not familiar with all details that
18 Mr. Smolinsky recited, but it is accurate or consistent with
19 everything I know. And, again, just to come back to the
20 particular position I was authorized to say is a much more
21 narrow, which is simply we have no objection to this proposed
22 fee arrangement, and I think implicit in that is an assessment
23 that it is an appropriate response and financial incentivizing
24 consistent with the status and needs of the case today.

25 THE COURT: All right, thank you. Thank you.

1 Now, Mr. Velez-Rivera, subject to your rights and Mr.
2 Williamson's rights to get what Mr. Smolinsky and what Mr.
3 Mayer said in an acceptable form from an evidentiary
4 perspective and to cross-examine, those explanations, if backed
5 up satisfactorily, would at least seemingly support an adequate
6 business judgment finding.

7 And we have an irony here that if I put the estate or
8 the creditors' committee to the expense of preparing the
9 affidavits, it would be taking money out of the pockets of the
10 very people we're helping. But you do have the right to get
11 that in a satisfactory evidentiary form and to cross-examine, I
12 think, if you wanted. And in addition to whatever else you
13 want to tell me, I want you to focus on whether you want it.

14 MR. VELEZ-RIVERA: I do want it, Your Honor. You're
15 reading my mind. My office naturally, as an agency of the
16 government, does not --

17 THE COURT: I have another agency of the government
18 that is acting at cross-purposes here.

19 MR. VELEZ-RIVERA: Not cross-purposes, Your Honor. I
20 have a different purpose. And for various reasons, the
21 packaging, as you mentioned, it matters. First of all, it's
22 taxpayer money. Your Honor, it's a lot of money. Our
23 projections are that AP Services, assuming confirmation by the
24 end of the year, will bring in a bill exceeding a hundred
25 million dollars.

1 There's an 800-pound gorilla in the room that we
2 haven't talked about today. And what's before you, Your Honor,
3 is but a small piece of a larger compensation package that --
4 it's fancy, it has several parts, but it's still only a small
5 piece. We're talking today about AP Services bonuses, for want
6 of a better term. The hourly component is much larger. And of
7 that 106 million dollar project of my office, what we're
8 talking about today is only about 20 percent of that 106
9 million dollar bill that we see at the end of the day. So this
10 matters.

11 We still have questions, Your Honor, my office has
12 questions, and I think we're getting much close to a fuller
13 understanding about whether the entire compensation structure
14 is better for the estate. The missing piece is whether the
15 hourly fee component actually raises the bill or not. It's for
16 an understanding of that missing piece and for a clear
17 understanding of everything that's been discussed today that we
18 would ask Your Honor to ask the debtors to file an affidavit
19 after all. And the reason I also ask for better packaging,
20 Your Honor, is that it is in compliance with your case
21 management order at the end of the day.

22 We would -- we may not need an evidentiary hearing or
23 further opportunity for cross-examination, but I don't know
24 that until I see an explanation in prose rather than a table
25 at -- an unsworn table, I should say, at the last minute. But

1 we can get there when we can get there.

2 THE COURT: All right, thank you.

3 MR. VELEZ-RIVERA: Thank you, Judge.

4 THE COURT: Okay, Mr. Williamson?

5 MR. WILLIAMSON: Your Honor, echoing the comments of
6 the Assistant U.S. Trustee, my concerns are not so much the
7 evidentiary form but the compliance with the Court's July 2nd,
8 '09 order and the colloquy that we all had in front of Your
9 Honor on April 29th as to how AP Services in the aggregate, not
10 just month by month, would be addressed. Our request, as we
11 noted in our papers, is simply to defer both requests, because
12 we don't think that the Court has before it, and not just in a
13 formulary sense, the informational material it needs.

14 And with respect -- we don't think the standard is
15 just what's disadvantageous to the estate, or even the business
16 judgment rule; it's the requirements of the Code as amplified
17 by the Court's July 2nd, '09 order and the April 29th hearing
18 in which we discussed AP Services' compensation as a retained
19 professional.

20 THE COURT: Okay. Anything else, Mr. Williamson?

21 MR. MAYER: No.

22 THE COURT: Very well. Thank you.

23 Is there anybody in the hearing who wants to be heard
24 who I haven't given the chance to, before I give Mr. Smolinsky
25 a chance to reply?

1 (No response)

2 THE COURT: Let the record reflect no response.

3 Come on up please, Mr. Smolinsky, if you'd care to
4 reply.

5 MR. SMOLINSKY: Your Honor, I would just note in
6 response to the fee examiner, I believe the initial AP Services
7 arrangement was approved under 363. I recognize -- and that's
8 a business judgment standard. I recognize, in connection with
9 the success fee, there was an agreement reached, I think it was
10 on the 25th of June of 2009 when we were before Your Honor
11 approving that agreement, that we had agreed that the second
12 half of the success fee would be approved under standards of
13 330, 331, of reasonableness. But I just wanted to make sure
14 the record is clear --

15 THE COURT: So your point being that the July 2009
16 order or orders affected only the retention component as
17 contrasted to the 363 modifying the retention going forward --

18 MR. SMOLINSKY: That's right, Your Honor.

19 THE COURT: -- component? I understand your point.

20 MR. SMOLINSKY: Otherwise, I didn't hear anything
21 different in the comments. I understand the fee examiner wants
22 more time. I understand that the U.S. Trustee wants
23 confirmation of things that I've talked about today. Unless
24 there are questions, I don't think I need to say anything
25 further.

1 THE COURT: Okay. Then I'm going to rule on this, and
2 I think I telegraphed my thinking in my colloquy to counsel.
3 I'm going to say now, even though it's more relevant to the
4 second motion before me, that this has nothing to do with the
5 quality of AP Services, which, although I haven't seen all of
6 them, those that I've seen are really outstanding. But on a
7 business judgment matter that has the number of zeros after it
8 in terms of its consequences, I think that I do need an
9 appropriate evidentiary basis to make the business judgment
10 finding that a motion of this character requires. Accordingly,
11 I am going to continue this motion, neither grant it nor deny
12 it, pending submission of the direct testimony affidavits or
13 declarations that are typically used in a contested matter
14 before me where matters of a factual nature have been put in
15 dispute.

16 To be frank, folks, if what Mr. Smolinsky said were
17 supported by affidavit or declaration, especially if
18 supplemented by what Mr. Mayer said, I would need either
19 additional facts or facts contradicting what those two guys
20 told me, for me to no longer be in a position to find it to be
21 an appropriate exercise of business judgment. But that's what
22 procedural due process is all about, and that's what being
23 careful with an estate's money is all about.

24 I fully recognize that putting the debtors and the
25 creditors' committee to the expense of these affidavits costs

1 money and takes it out of the pockets of the creditors we're
2 trying to help. But I can't, I think, criticize the U.S.
3 Trustee's for asking me to go by the book on a matter of this
4 character.

5 Mr. Smolinsky, I don't know if you're in a position to
6 answer this on the spot, and, if you want to beg off because
7 it's an unfair question, I'm going to give you that
8 opportunity. But how much time would you want to get in the
9 one, two or three affidavits that would seemingly be required
10 on a matter of this type?

11 MR. SMOLINSKY: Your Honor, Joe Smolinsky.

12 I think we can certainly file something within a
13 week's time.

14 THE COURT: All righty. Now, it would seem to me,
15 then, that orderly procedure and not taking more money out of
16 the pockets of creditors would call for the U.S. Trustee's
17 Office and the fee examiner to have the opportunity to read the
18 direct testimony affidavits and advise you and ultimately me of
19 whether they want to put in their own affidavits and/or cross-
20 examine.

21 And Mr. Velez-Rivera, my question to you would be how
22 much time would you need, after you got affidavits from Mr.
23 Smolinsky -- an affidavit or affidavits -- to make that kind of
24 determination? Or do you think I'm seeing it the wrong way?

25 MR. VELEZ-RIVERA: No, Your Honor, you're seeing it

1 the right way. Within a week following Mr. Smolinsky's
2 submission, we should be able to assess whether there's
3 sufficient -- evidentiary sufficiency from my office's
4 perspective.

5 THE COURT: Mr. Williamson, you in the same boat?

6 MR. WILLIAMSON: Yes, Your Honor, but I'd like to ask
7 the Court a follow-up question that's directly related.

8 THE COURT: You may.

9 MR. WILLIAMSON: Your Honor, if the materials are
10 submitted and if the Court is satisfied, then, under the
11 applicant's request, it would receive a virtually immediate
12 payment of 5.3 million dollars, give or take. If all those
13 things occur, then we will be at a point that we have not been
14 before, which is asking whether the work underlying that
15 additional payment is subject to the fee examiner's review --
16 and believe me I'm not asking for it, I got everything else
17 that's pending -- whether it's, under the Court's order,
18 subject to fee examiner review. And that takes us back to our
19 April 29th colloquy.

20 THE COURT: I'm not sure if I'm in a position to
21 answer that based either on my memory or without giving
22 opponents an opportunity to be heard on that.

23 MR. WILLIAMSON: I --

24 THE COURT: I think I need, subject to your rights to
25 be heard, to separate these issues and first ascertain whether

1 I'm going to approve those aspects of the motion other than
2 when the check is going to get written out, and then to provide
3 procedural due process for people to be heard vis-a-vis any
4 other concerns they may have.

5 MR. WILLIAMSON: I'm fine with that.

6 THE COURT: Mr. Velez-Rivera, do you want to weigh in
7 on that issue too?

8 MR. VELEZ-RIVERA: No. It's fine with us too.

9 THE COURT: You're just standing up here waiting to
10 hear what we're going to do next?

11 MR. VELEZ-RIVERA: I'm waiting to here whether Mr.
12 Williamson was done.

13 THE COURT: I understand. Okay.

14 MR. WILLIAMSON: He is.

15 THE COURT: All right, he is.

16 Here's what I want to do, folks: If you need a little
17 extra time, I'm going to give it to you, Mr. Smolinsky, but I
18 sense, from the way you articulated it, you'd like to keep this
19 thing moving forward without material delay. So I'm going to
20 give you a week, subject to extension for cause, to come up
21 with whatever direct testimony affidavit or affidavits you
22 regard as appropriate. And I'm going to give Mr. Velez-Rivera,
23 on behalf of the U.S. Trustee's Office, and Mr. Williamson, an
24 additional week to come up with any other affidavits they want
25 to submit, if they choose, and also to advise the debtor,

1 creditors' committee, U.S. Attorney's Office in its many hats,
2 and my chambers, as to whether there's a desire to cross-
3 examine. If there is, I'm going to hold whatever evidentiary
4 hearing needs to be held as soon as practical after Labor Day,
5 although I got to caution you that another one of my cases,
6 which in another environment might be considered material since
7 it's got over a billion bucks in debt, has a contested
8 confirmation hearing at that time and a basketful of issues,
9 including estimation hearings on tort claims. And I'll deal
10 with any vestigial argument that I need to hear.

11 I also need you people to see if you can agree upon
12 what is agreed upon vis-a-vis when, if I were to approve this,
13 payment would be forthcoming, in whole or in part; and teeing
14 up, if you have to agree to disagree, on a recommended
15 mechanism for me to deal with open issues. I think that's as
16 far as I can or should rule today on the first motion.

17 And since we've been sitting now for almost two hours
18 without an opportunity for anybody to go to the facilities, I'm
19 going to take a ten-minute break. And then we'll continue with
20 the matter of the remaining six and a half million bucks to be
21 paid of the fee request. We're in recess until twenty-five
22 till twelve.

23 MR. MAYER: Your Honor, I expect to leave the balance
24 of the hearing to my colleague, Ms. Sharetta. I hope that's
25 okay?

1 THE COURT: Certainly.

2 (Recess from 11:27 a.m. until 11:37 a.m.)

3 THE COURT: Have seats, everybody.

4 All right. We have the remaining AP matter. And I
5 think I telegraphed my thinking on this before, which is, that
6 based on everything I've seen, AP Partners (sic) has done an
7 outstanding job, and that the numbers its talking about don't
8 seem out of the ballpark in the context of others that have
9 been approved, but that I have a failure up to this point to
10 comply with the 2009 -- July 2009 order. So I'm wondering how
11 I should be dealing with it.

12 Mr. Smolinsky, are you or somebody from AP going to be
13 arguing this one?

14 MR. SMOLINSKY: Joe Smolinsky on behalf of the
15 debtors.

16 I don't know if anyone is going to be arguing it
17 today. But I'm happy to make some remarks on behalf of the
18 debtors to hopefully --

19 THE COURT: Of course, of course.

20 MR. SMOLINSKY: -- move this along. And I take it
21 that you've noted that the application, although we served it
22 out, is not prepared by Weil.

23 THE COURT: Yes, I noticed that AP signed the original
24 application. But I also noticed that you submitted the reply.

25 MR. SMOLINSKY: That's correct, Your Honor. I was

1 just trying to be efficient. We had one day to file a reply
2 and we thought we'd just --

3 THE COURT: No, and I'm grateful --

4 MR. SMOLINSKY: -- in there.

5 THE COURT: -- for that. And I'm grateful for
6 anything you may have done in terms of helping get information
7 exchanged. But I think I telegraphed what I need both sides to
8 address on this.

9 MR. SMOLINSKY: Yes, Your Honor. First of all, I'd
10 like to say that from AP Services' perspective, they think that
11 they've complied with all of the protocols that are required of
12 them under the various orders relating to their engagement,
13 with maybe one exception; and that's the inclusion of time
14 records with their application for the balance of the success
15 fee. I don't know -- I don't think that there's a dispute --
16 and I guess it's mea culpa -- that at the hearing in June -- on
17 June 25th of 2009, when there was a deal worked out with the
18 U.S. Trustee, that there was an agreement that the second half
19 of the fee would be deferred for one year, that there would be
20 an application filed, which there was, but it says that time
21 records would be included. We could all debate --

22 THE COURT: Why would you need to give me a mea culpa
23 on that?

24 MR. SMOLINSKY: Because I don't believe that AP
25 Services did that when they filed the application. It wasn't

1 till later that they submitted their time records to the U.S.
2 Trustee. But I think, other than that, they've complied with
3 all of their obligations, not only with respect to the second
4 half of the success fee, but with respect to their ongoing
5 monthly payments.

6 THE COURT: Um-hum. Continue.

7 MR. SMOLINSKY: I guess it's sua culpa, not mea culpa.

8 THE COURT: Yeah, I thought mea was you taking
9 responsibility.

10 MR. SMOLINSKY: The --

11 THE COURT: I'm not looking for culpa, but I'm looking
12 to do what I need to do.

13 MR. SMOLINSKY: Yes. I mean, I guess there's -- there
14 could be a disagreement -- I'm not sure how relevant it is --
15 but certainly there could be a disagreement about the relevance
16 of over a year-worth of invoices in connection with a success
17 fee that was specifically related to a sale transaction.

18 THE COURT: Indeed there is. And that's something I
19 want Mr. Velez-Rivera to address.

20 MR. SMOLINSKY: But nevertheless, I don't step back
21 from the statement -- and I've read the transcripts -- that it
22 was agreed that those would be provided.

23 Speaking to AP Services prior to -- during the break,
24 I guess we have a suggestion. Nobody is here looking to
25 railroad the U.S. Trustee in reviewing time records in a matter

1 of a few days. We tried to be responsive to their request for
2 more information and provided the information as quickly as
3 possible. But to the extent that they need more time to review
4 those, AP Services is not in a position to say tough luck. I
5 think they should have that opportunity. Again, there's a
6 question about relevance. But that could be addressed at a
7 future time.

8 So perhaps what the answer is, is that we track this
9 along the same way as the amendment and give the U.S. Trustee
10 an opportunity to see whether the time records for this lengthy
11 period of time impacts their decision as to whether the success
12 fee is reasonable. Again, I didn't see anything in the
13 objection to suggest that they think that it's unreasonable;
14 that they didn't comply other than with respect to the time
15 records; that they didn't do the work that was the precondition
16 to the entitlement to that success fee. But to the extent that
17 they have an issue on those fee applications, we could have
18 that same hearing utilized for that purpose. And I think AP
19 wants to move forward and try to get those fees awarded and
20 paid as quickly as is reasonably possible.

21 THE COURT: Okay. Thank you.

22 Mr. Velez-Rivera?

23 MR. VELEZ-RIVERA: Your Honor, our concerns are with
24 compliance with your order from last year. We believe, as we
25 stated in our objection to this motion, that the time records,

1 indeed, should be filed. That was a negotiated term. It's an
2 ordered term. And AP Services, naturally, isn't above an order
3 of this Court.

4 We could use further time to scrutinize the time
5 records that are at issue. And I should be clear. The success
6 fee was earned as of July of last year. What my office needs
7 more time to scrutinize aren't the full 4,000 pages that were
8 submitted to my office, but rather just the ones that apply to
9 the period of time to which the success fee itself applies.

10 THE COURT: Um-hum.

11 MR. VELEZ-RIVERA: So, Your Honor, I think we're with
12 the Court. We'd like to see the relevant time records filed.
13 And we could certainly use a little bit more time to look at
14 them.

15 THE COURT: All right. Mr. Williamson?

16 MR. WILLIAMSON: Thank you, Your Honor. We did not
17 yet receive the 4,000 pages of time records. And the same
18 question that I raised before the break remains before us.
19 While, obviously there's an important disclosure component to
20 filing the time records, the question remains, whether AP
21 Services' time, whether for six weeks or the last year and a
22 half, weren't reviewed by the fee examiner. Because under the
23 Court's prior order, AP Services is a retained professional.

24 And again, this is not an assignment that we
25 campaigned for. But like everyone else, we read the Court's

1 July 2nd order and it specifically says a reasonableness
2 review, time records in increments; and of course, one of the
3 relevant cases, all of us agree is XO, which says that time
4 records, order or not, are a relevant factor in a
5 reasonableness review.

6 THE COURT: I'm not sure if I understand what you're
7 saying. You're saying that -- you're obviously saying that
8 their time records have to be filed. But are you then also
9 saying that the matter must be kicked for the incremental time
10 for you to review their services, either for the period up to
11 the time of the sale or for the last year and a quarter of the
12 case?

13 MR. WILLIAMSON: As I suggested before the break, Your
14 Honor, that's inevitably a question if we're talking about
15 fifteen percent retroactive increase. It necessarily raises
16 the question of what is the fifteen percent an increase from.
17 And that kicks us back to the question we all left unanswered
18 on April 29th.

19 THE COURT: Well, I'm not sure if it is the same
20 question or not, Mr. Williamson, because long before you
21 entered into the case, I determined that if the conditions
22 associated with the incentive payment had been satisfied, and
23 their services would -- turned out to be reasonable, or at
24 least subject to a reasonableness test, which ultimately would
25 seemingly be a judicial determination, thrust in my lap, if

1 certain conditions were satisfied, among which were that there
2 be a sale and that I considered the fees to be reasonable,
3 then they would get their fee; or impliedly, if the conditions
4 were satisfied, but to the extent that I found them reasonable,
5 if it was less than a hundred percent, they would get the fee,
6 except to the extent of a hundred percent.

7 I don't remember the scope of your responsibilities
8 under your retention order to review, Mr. Williamson, vis-a-vis
9 an issue of this character. Can you refresh my recollection in
10 that regard?

11 MR. WILLIAMSON: Yes, with one prefatory note, which
12 is, we are happy not to review any of AP Services detailed time
13 records. But the retention order, Your Honor, to answer your
14 question directly, spoke in terms of retained professionals.
15 And AP Services, for, you know, better or worse, was listed as
16 a retained professional long before we came onto the scene.

17 THE COURT: All right. Anything further from your
18 perspective, Mr. Williamson?

19 MR. WILLIAMSON: No, sir.

20 THE COURT: Mr. Smolinsky, do you want to be heard
21 either vis-a-vis what Mr. Williamson said or otherwise?

22 MR. SMOLINSKY: Yes, Your Honor. I really believe
23 that the fee examiner is mixing apples and oranges. The
24 monthly compensation order defined retained professionals so
25 that retained professionals can get paid. What the fee

1 examiner is suggesting is that any other order or any other
2 motion or any other pleading filed any time in the future
3 during the case that uses the same defined term goes back to
4 the original definition.

5 So I think we take issue at the notion that just
6 because they were considered in the definition of retained
7 professional for one purpose, that that gets bootstrapped into
8 how it's defined under the fee examiner's engagement letter. I
9 understand that that's not an issue for today, I just want to
10 make clear that I don't think that AP Services was under ---
11 ever under the notion that they were supposed to be included in
12 the context of the monthly fee review that would be undertaken.

13 With respect to the success fee, we're happy to
14 provide the fee statements to the fee examiner with respect to
15 that period of time relating to the sale, but I know what's
16 going to happen. The fee examiner's going to review it. He's
17 going to say these monthly fee statements should be subject to
18 across-the-board discount of five percent, and we're going to
19 be arguing about something that's not before the Court at this
20 instant, which is the success fee and whether the success fee
21 is warranted.

22 So I understand we have to take up the issue as to
23 whether the fee examiner is going to be responsible for going
24 through all of Alix -- all of AP Services' fee statements for
25 the entire case. But that's not really what we're talking

1 about here. And I think he's trying to slowly creep into a
2 different area.

3 MR. WILLIAMSON: Actually, I'm trying to creep away
4 from that area. But just I wanted to raise the issue and be
5 clear.

6 THE COURT: All right. Well, if you're willing to
7 creep away from it, that avoids a decision that I need to make.
8 I have a skilled U.S. Trustee's Office in this district. And
9 the issue that may warrant further discussion later, but I'm
10 not creeping to look for more controversy -- I've got plenty of
11 controversy -- is whether stuff that is on an hourly basis is
12 susceptible to that. It seems to me that the U.S. Trustee's
13 Office can and is quite able to decide whether, as Mr. Velez-
14 Rivera observed in comments that I was inclined to agree with
15 him on and I still am inclined to agree with him on, that his
16 review was for the period through the time of the sale, and we
17 would look to see the extent to which, based upon the work up
18 to the time that triggered the entitlement, the fee was
19 reasonable or not.

20 So here's what we're going to do. Mr. Smolinsky, I'm
21 going to require that the time sheets, to the extent required
22 under the July -- and I forget the date in 2009 -- 2nd?

23 MR. SMOLINSKY: I believe it was June 25th was the
24 hearing date, I don't know what --

25 THE COURT: Well, June 25, 2009, all right. To the

1 extent required under my earlier order, that order's going to
2 be complied with. And if that requires time sheets being
3 filed, they'll be filed. I also want them informally
4 provided -- since they have to be filed anyway, I want them
5 provided in a convenient way to the fee examiner. I am not
6 going to decide today the extent to which the fee examiner has
7 the authority or that it's desirable for it to review fee apps
8 or time charges for services after the sale. But at least I
9 want them provided to the fee examiner so that we all know what
10 we're talking about.

11 And I concur with your idea, Mr. Smolinsky, that if we
12 can put this on a parallel track with the other, we try to do
13 that. I would hope that neither of the two matters that are
14 left with AP Partners would tend to slow down the other. But
15 we can worry about that if and when there's a risk of that
16 happening.

17 All right. Not by way of reargument, are there things
18 I failed to consider, Mr. Smolinsky?

19 MR. SMOLINSKY: Your Honor, I'm looking at the
20 transcript from that hearing, and it talks about --

21 THE COURT: The hearing back in '09, or --

22 MR. SMOLINSKY: Yes, Your Honor.

23 THE COURT: Okay.

24 MR. SMOLINSKY: It talks about the filing of an
25 application attaching time records. It doesn't speak as to

1 which time records. What I'd like to do is to file with the
2 Court the time records for the period from the petition date
3 through the sale closing, which I think are the relevant time
4 sheets in connection with the success fee. I don't know if
5 Your Honor was contemplating anything different, but that's
6 what I would envision.

7 THE COURT: Mr. Velez-Rivera, do you want to be heard
8 on that issue?

9 MR. VELEZ-RIVERA: That's exactly what I was thinking,
10 Your Honor.

11 THE COURT: I'm sorry?

12 MR. VELEZ-RIVERA: That's exactly what I was thinking.
13 That same time period is --

14 THE COURT: Okay.

15 MR. VELEZ-RIVERA: -- exactly what we had in mind.

16 MR. SMOLINSKY: Thank you, Your Honor.

17 MR. VELEZ-RIVERA: Thank you.

18 THE COURT: Fair enough. All right. Then can we talk
19 to the relief from stay motion?

20 MR. WILLIAMSON: Your Honor, this is Brady Williamson
21 again. May I raise one scheduling matter just as an
22 observational matter, as long as we're on the subject of dates?

23 THE COURT: Yeah, sure.

24 MR. WILLIAMSON: As of yesterday, Your Honor, we began
25 getting fee applications for the third round. And because of

1 the relatively recent involvement of the asbestos professionals
2 and the environmental professionals, we suspect there will be
3 upwards of twenty, as opposed to a dozen or fourteen, fee
4 applications in this next round. And in the interests of
5 everyone's sanity, not to mention the Court's schedule, it is
6 our intention to divide those into two tranches and to ask for
7 two separate hearing dates; one in September, one in October,
8 so that A) we can get our work done; B) everybody gets due
9 process; and C) everybody's sanity is preserved.

10 THE COURT: That doesn't offend me as a matter of
11 concept, Mr. Williamson. But I wonder if I can make a final
12 decision on that without -- I would be surprised if Mr.
13 Esserman's still on the phone. I don't know if I have anybody
14 from Caplin & Drysdale here at all.

15 MR. ESSERMAN: Your Honor, this is Sandy Esserman. I
16 still am on the phone.

17 THE COURT: How does that sound to you, Mr. Esserman?
18 Are you okay with that?

19 MR. ESSERMAN: Yes, it's fine.

20 THE COURT: All right. Then I'm going to approve it,
21 subject to giving to reconsideration in the event Caplin &
22 Drysdale wants to be heard. But is there anyone in the
23 courtroom who thinks that isn't a good idea? I don't hear a
24 response.

25 All right, Mr. Williamson, it sounds like your idea

1 may make sense. So why don't you tentatively proceed that way.
2 Maybe you or one of your partners can pick up the phone to
3 Caplin & Drysdale, tell them what you have in mind, and tell
4 them that I said that if they want to be heard on the matter,
5 I'm not going to foreclose them.

6 MR. WILLIAMSON: That's fine. We'll do that, Your
7 Honor. And then logistically, we'll simply check with your
8 staff about appropriate dates, one in September, one in
9 October.

10 THE COURT: Fair enough.

11 MR. WILLIAMSON: All right. Thank you.

12 THE COURT: Thank you.

13 All right. Everybody who's here for matters other
14 than the relief from stay is now free to go, if you choose to.

15 IN UNISON: Thank you, Your Honor.

16 THE COURT: And I'll hear the Brittinghams matter.

17 (Pause)

18 THE COURT: And I have a couple of remarks here too.
19 Let me get appearances on this first. First from the Klestadt
20 firm.

21 MR. GEBRAEL: Good afternoon, Your Honor. Samir
22 Gebrael from Klestadt & Winters on behalf of the Brittinghams.

23 THE COURT: Okay, Mr. Gebrael. And are you going to
24 be arguing that for the estate, Mr. Smolinsky, or one of your
25 colleagues?

1 MR. SMOLINSKY: Yes, Your Honor.

2 THE COURT: Okay.

3 MS. SHARRET: Your Honor, Jennifer Sharret from Kramer
4 Levin on behalf of the committee.

5 THE COURT: Right, Ms. Sharret.

6 Folks, I don't know how many relief from stay motions
7 I've had so far, but this one appears to be materially closer
8 than most and at least seemingly creates a stronger cause for
9 relief from the stay. But it caused me to scratch my head in
10 the context of one or both of the sets of papers reflecting
11 months of dialogue on this; and presumably, occasioned by the
12 uncertainty of the level of insurance and/or the uncertainty of
13 getting a recovery from parties other than this estate in the
14 form of an unsecured claim, which to my disappointment, is not
15 going to put a lot of money into the pockets of creditors, even
16 if the lawsuit is won.

17 Was it really so impossible to work out a consensual
18 resolution on this?

19 MR. GEBRAEL: Yes, Your Honor. Initially we actually
20 had in mind to waive our claim against the debtor. As you can
21 see, we had withdrawn that motion, and now we're not doing so.
22 And with that in mind, I don't think the MLC really entertained
23 the idea of allowing us to proceed without releasing the MLC.
24 And I can explain further, Your Honor, why --

25 THE COURT: I don't want hear --

1 MR. GEBRAEL: -- we had that change.

2 THE COURT: -- 408 stuff. If you're both telling me
3 I've got to decide it, I'm going to decide it. And one of you
4 is going to be unhappy.

5 MR. GEBRAEL: Correct.

6 THE COURT: Mr. Smolinsky?

7 MR. SMOLINSKY: Your Honor, I'd like to provide some
8 background to this matter, because I think it would be helpful
9 to put it into context.

10 As I think Your Honor is aware, the Brittinghams
11 originally filed a motion to lift stay, as indicated, where
12 they agreed to release the debtors from the state court
13 litigation. At the last minute -- and we did have a
14 resolution -- they withdrew that motion, filed another motion
15 seeking to continue that state court action and to preserve
16 their rights to assert a claim against MLC. This is a jury
17 trial in Ohio. We think that to the extent that they are
18 seeking to assert a claim against MLC, we should have the right
19 under the mandatory mediation program, to see if we can resolve
20 it, short of paying to defend an action.

21 There are significant issues as to whether there is
22 anything to pursue by way of Delphi. There's also factual
23 issues. They believe that Delphi's insurance company was
24 defending MLC. We don't believe that was the case. We believe
25 that Delphi was actually providing defense. And once Delphi

1 was in bankruptcy, they stopped providing that defense and in
2 fact, the Brittinghams didn't file a proof claim against Delphi
3 even though the assertion in their papers is that Delphi had
4 assumed employee liability.

5 The interesting element here is that MLC is not the
6 only defendant.

7 THE COURT: I understand. But if you're going into
8 the merits of your argument, which, of course, you're going to
9 have the opportunity to do, I'll take the argument in the
10 traditional way.

11 Your bottom line is that both sides failed to
12 consensually resolve this?

13 MR. SMOLINSKY: Yes, Your Honor. I think before the
14 estate is subject to incurring the cost of participating in a
15 jury trial in Ohio, and of course, the slippery slope of other
16 similar motions, we did want to bring this to the attention of
17 the Court, because we don't necessarily think that that's a
18 good expenditure of the estate's assets.

19 THE COURT: All right. Okay, Mr. Gebrael, I'll hear
20 your argument.

21 MR. GEBRAEL: Good afternoon, Your Honor. First, I do
22 want to highlight the fact that this trial -- this Ohio state
23 trial has been going on for nine and a half years.

24 THE COURT: I thought it said eight in your papers.
25 Is it now up to nine and a half?

1 MR. GEBRAEL: It was filed in 2001 -- February 2001,
2 so in fact, as of 2001 -- this February 2011, it will be ten
3 years.

4 THE COURT: Well, we're not in 2011 yet. So I --

5 MR. GEBRAEL: Sorry --

6 THE COURT: -- advocacy still has to stay true to the
7 facts.

8 MR. GEBRAEL: -- right.

9 THE COURT: Don't fudge them, okay?

10 MR. GEBRAEL: Sorry, Your Honor. That's why it's
11 actually nine and a half years. And I also want to highlight
12 the fact that in those nine and a half years, the Delphi
13 insurance carrier had defended Dr. Stull in this Ohio
14 litigation -- Dr. Stull and the MLC. And they only stopped
15 their defense, and I guess this claim that there is any
16 insurance by Delphi, when the GM bankruptcy stay was filed on
17 June 1st of 2009. And when we were first approached by the
18 Brittinghams, our initial reaction, of course, was before
19 having the debtor spend any costs in -- you know, before even
20 approaching the idea of whether we were going to lift the stay
21 or not, we thought the first step would be to file the 2004
22 application.

23 And as a response to our 2004 application, the MLC's
24 counsel, their first reaction was to send us the Delphi policy
25 and to say here's the applicable policy, go away, go after

1 Delphi, why are you coming after us. And again, I'm not saying
2 anything disparaging against MLC's counsel, but it's
3 interesting because they sent us a Delphi policy three months
4 after supposedly there was an amendment to the Delphi plan that
5 would have terminated that indemnification agreement. It just
6 seems to -- it seems a little bit strange that even the MLC's
7 counsel was not aware that there was some kind of amendment to
8 the Delphi plan, that this indemnification was terminated. But
9 again, that's no way disparaging MLC's counsel. They have --
10 they did try to work with us and try to provide us with
11 whatever documents that we had requested pursuant to the 2004
12 application.

13 The other set of documents that we received, and
14 again, I would like to thank Mr. Smolinsky for providing us
15 with letters directly from the New -- from New GM, stating that
16 Dr. Stull will be represented by New GM in the Ohio State
17 Court.

18 I think the next step is to jump right into these
19 factors, Your Honor. And there was -- on November 5, 2009,
20 there was actually, I think in the -- his name was
21 Mr. Lawrence -- a lift stay by Mr. Lawrence that you had
22 denied. But I think that it's very telling to look through
23 that transcript and to see some of your comments there. And
24 I'd like to play off that. And you had said that the three
25 most important factors -- and I'm going to start with those --

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1 are the factors -- the second, the seventh and the twelfth.
2 And the second and the seventh are basically whether or not
3 this is going to interfere with the bankruptcy case and whether
4 this would affect or prejudice the other creditors of the
5 debtors.

6 Your Honor, this case has been going on for nine and a
7 half years. This is trial ready --

8 THE COURT: Was it filed in May 2002?

9 MR. GEBRAEL: February 2001. That's --

10 THE COURT: Why does the certificate of --

11 MR. GEBRAEL: That's the amended --

12 THE COURT: -- service that I have show May 30, 2002?

13 MR. GEBRAEL: -- that's the amended complaint, Your
14 Honor. The initial complaint was filed in February 2001. We
15 had filed on the docket as an exhibit the amended complaints.

16 THE COURT: So it was filed in February of '01?

17 MR. GEBRAEL: Of '01, correct, Your Honor.

18 THE COURT: Okay.

19 MR. GEBRAEL: We already have -- from New GM, we
20 already have a letter stating they're going to defend Dr.
21 Stull. Whatever arguments that New GM -- maybe this is a bit
22 speculative, and I don't know the exact amounts -- but whatever
23 arguments that New GM is going to bring are very much going to
24 be in line with the arguments that the MLC are going to have.
25 So there's going to be a lot of overlap and there's not going

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1 to be a lot of costs that the MLC are going to have to spend.

2 The ML -- also, Your Honor, it's very important to
3 point out, the MLC has already told us, they don't have any
4 discoverable information. They don't have anybody that we can
5 depose. Again, their involvement's going to be very, very
6 small.

7 And, Your Honor, in light of the fact that under
8 Section 157(b)(5), this kind of claim, since it is a personal
9 injury claim, it would be transferred to the district court.
10 We are going to have to litigate this case. And so what I
11 don't understand is that their argument that we're trying to
12 save costs, how are they going to save costs? They're going to
13 have to litigate this case in district court. Then why not
14 allow it to proceed in Ohio State Court? And in fact, the
15 opposite is true, because if they do allow it to proceed in
16 Ohio State Court, they would actually save costs for all the
17 other creditors, because it's, again, nine and a half years in.

18 The state court knows the facts. It's ready. In
19 fact, August 11th, next Wednesday, they are hoping -- they're
20 having a pretrial conference call, and they're hoping to set
21 the trial dates, Your Honor.

22 I'd like to address --

23 THE COURT: Say -- when is -- say that again slower.
24 What is being done in the trial court?

25 MR. GEBRAEL: August --

1 THE COURT: My thinking was that if I granted your
2 motion at all, I would nevertheless require you to proceed with
3 ADR, at least to take care of your claim against GM or Old GM,
4 and then let you proceed if the ADR weren't successful.

5 MR. GEBRAEL: Your Honor, in terms of proceeding with
6 the ADR, there's several issues there. First, the ADR order
7 does not have jurisdiction over the New GM, so --

8 THE COURT: No, but what's wrong with you getting
9 whatever you're going to get out of GM and then going against
10 the other guys?

11 MR. GEBRAEL: The problem, Your Honor -- and we've
12 asked this question to the MLC and we've asked it -- how do you
13 isolate the liability? And nobody seems to know. We've
14 asked -- the MLC contacted us and said, you want to take part
15 in the ADR, and we said sure. How do you isolate the
16 liability? And they said, that's your problem. I said no,
17 that's -- well, I guess that is our problem, and that's why
18 we're trying to lift the stay. So nobody has been able to
19 answer that question. And our three tort lawyers that are
20 dealing with this have not been able to answer that question,
21 and that's why we're here today.

22 And I'd like to also address something that they had
23 in their objection about this floodgates argument. I looked at
24 the docket very carefully, Your Honor. On November 5, 2009,
25 there was this Reynolds litigation. And in that litigation you

1 had allowed the modification of the stay. After that
2 modification of the stay, there has not been --

3 THE COURT: Pause, please, Mr. Gebrael --

4 MR. GEBRAEL: Yes.

5 THE COURT: -- because I thought that -- if I were to
6 grant your motion, it would be the first. I don't remember
7 having granted one before.

8 MR. GEBRAEL: Your Honor, the Reynolds lift stay was
9 allowed. And it was a tort litiga -- it was tort litigation
10 also. They were farther ahead in the process. They had a
11 judgment that they had to somehow -- I believe there was an
12 appeal on the judgment, and they were still figuring out -- I
13 don't know all the details, but I'm pretty sure this will not
14 be the first. In fact, I counted, and there's about ten or
15 eleven as of last night. Five of them -- I believe five of
16 them have been approved lift stay on limited -- on limited
17 grounds. And again, this is -- our modification of the stay
18 would only be on limited grounds.

19 We would still have to come back to the bankruptcy
20 court with an unsecured claim. We would still be in line with
21 all the other unsecured creditors. So this argument that just
22 because you allow one modification of the stay, a flood of
23 other claimants are waiting in the wings, simply is not true.
24 It has not happened. I counted. There's about ten or eleven
25 that have been filed.

1 The other fact -- this floodgate argument, again. We
2 were in front of Your Honor eight months ago in a 2004
3 application. And I don't want to bring up another completely
4 different issue, but again, the same argument was said that a
5 flood of 2004 applicants would be allowed if we were --

6 THE COURT: Is that the one from the German soldier
7 who was injured --

8 MR. GEBRAEL: Exactly.

9 THE COURT: -- while in training here in the U.S.?

10 MR. GEBRAEL: Exactly, Your Honor. And I counted as
11 of last night, Your Honor. There's not a 2004 application
12 flood. There's, in fact, a drought. I think I counted three
13 of them. So this issue that once we decide this one lift stay
14 there's all these other claims, it's simply not true. The
15 Sonnax factors, in fact, allows us to look at each individual
16 claimant, case-by-case basis, Your Honor.

17 The other factor is -- that you had stated is very
18 important is the twelfth factor, the balancing of the harms. I
19 think I've already articulated, I'm not going to go through
20 what the harm is to the debtor. And I believe there is no
21 harm. But we'll look at the other side of the equation here.
22 And it is -- it's a very, very somber issue, because we have
23 expert testimony from the Ohio State Court that says that Ms.
24 Brittingham has, in fact, a fifty percent chance to survive
25 four more years without a lung transplant -- a double lung

1 transplant. She has a fifty percent chance to survive five
2 more years with a lung transplant.

3 And I focus on that because, in fact, in your
4 transcript, Your Honor, of November 5, 2009, when you were
5 discussing the Lawrence lift stay here, you had mentioned
6 that -- and I'd like to quote: "Nobody's going to be depriving
7 Mr. Lawrence of his day in court. The issue rather is, which
8 court will decide the issues." And that's why you had denied
9 that lift stay motion.

10 But in fact, here, Your Honor, somebody will be
11 denying Ms. Brittingham's day in court. Ms. Brittingham,
12 unfortunately, will probably not survive the gauntlet of
13 eighty-odd procedures that they want us to wait out.

14 I'd like to go on to the fourth factor in discussing
15 whether or not there's a specialized tribunal. Technically,
16 the Ohio State Court is not a specialized tribunal. But if
17 anything comes close to it, I would say the Ohio State Court is
18 a specialized tribunal. The fact that they've dealt with this
19 case for nine and a half years; the fact that it's personal
20 injury issues; the fact that it has nothing to do with any
21 federal laws, it's purely Ohio state law, makes it the
22 tribunal -- makes it the court where this case should be heard
23 and should be left to be heard.

24 Further, Your Honor, in relation to the fourth factor,
25 I'd like to address something that the MLC had stated in their

1 objection. They stated that, "Should the need to conduct a
2 jury trial in the movants' claim against the debtors arise,
3 such litigation could occur in District Court for the Southern
4 District of New York or the district court in Ohio." Again, I
5 think I alluded to this earlier. But why are they arguing that
6 they're trying to save costs, if they're actually mentioning,
7 right in their objection, that this case -- at the time of
8 their choosing, should be heard in district court? There could
9 be no cost saving. They'll have to litigate it in district
10 court. Let's allow this claim then to proceed in Ohio State
11 Court.

12 Another issue that they brought up in their objection
13 that I'd like to address. They said that the Ohio court does
14 not have a particularized expertise that this court does not
15 have. This court will not even be hearing this claim, Your
16 Honor. Under 157(b)(5), it would be the district court.

17 Finally, they're saying that the decision of where to
18 try the multitudes of the personal injury claims does not have
19 to be made at this juncture. I think I alluded to this
20 earlier. This is -- this is the time for Ms. Brittingham, Your
21 Honor. Maybe for other claimants they can wait, but not for
22 Ms. Brittingham. And second, again, this is not about all the
23 other personal injury claims. Based on the Sonnax factors, we
24 are just looking at Ms. Brittingham's claim.

25 In terms of the interests of judicial economy, I think

1 it would be a grave understatement to say that it would not be
2 the most economical judicially to allow this case to proceed in
3 Ohio State Court. After nine and a half years, we're --
4 they're going to set the court date for the end of this year if
5 not the beginning of next year. It definitely would be in the
6 interests of judicial economy to allow it to proceed in Ohio
7 State Court.

8 I would also refer back to the Lawrence lift stay
9 hearing, where you had stated that the economical way of doing
10 prepetition litigation would be to allow the claims process to
11 proceed, as for all the other thousands of claims against the
12 estate. And I think Mr. Smolinsky mentioned -- I think was
13 referring to the other motion today -- that this claims
14 process, he said, we'll be here for a couple more year. We
15 don't have those couple more years, Your Honor.

16 And they also mention in their objection that the
17 estate has minimized costs by following the ADR procedures.
18 Referring back to your statement, Your Honor, in that Lawrence
19 lift stay hearing, you also mentioned that the reason why you
20 couldn't lift the stay, because this is a garden-variety claim,
21 referring to the Lawrence claim. This was -- the Lawrence
22 claim, I believe, was just old wages, and they were filing a
23 claim to get paid.

24 THE COURT: Lawrence was a nontort action?

25 MR. GEBRAEL: It was not -- exactly. This is not a

1 garden-variety claim, Your Honor. By no means is this a
2 garden-variety claim. And in fact, Your Honor, when they
3 address that the ADR procedure's going to save a lot of costs,
4 that is probably true, but not for this claim. And in fact,
5 the ADR procedures allows for this type of claim, this tort
6 litigation, where there is a pending action. It sets it out in
7 section II(e)(2) through (4). And it sets out that if the
8 Court -- the bankruptcy court can't hear it, then it will be
9 allowed to proceed in the state court, of course, subject to
10 their rights to file a motion to transfer, which we cannot take
11 away.

12 The eleventh -- factor number 11, Your Honor, the
13 parties are ready for trial. I think I've already stated that
14 they are. Relief would result in complete resolution of claim.
15 It would. All the parties would be presented -- represented at
16 that hearing.

17 And I'd like to address something that they stated in
18 their objection. They said that they don't believe the
19 Brittinghams need a judgment against the MLC to pursue third
20 parties. It was an unsubstantiated statement. In fact, we do
21 need that judgment. And there's the issue that brings Delphi
22 back in. Although --

23 THE COURT: Wait. Time out.

24 MR. GEBRAEL: Yes.

25 THE COURT: If that doctor -- I forgot his name -- if

1 that doctor did --

2 MR. GEBRAEL: Stull.

3 THE COURT: -- Stull, okay. If that doctor did
4 something bad, you can't get a judgment directly against him?

5 MR. GEBRAEL: Your Honor, because of the fact that the
6 MLC was the -- was acting as his employer at the time, and they
7 are a necessary party, we need to apportion the liability
8 between the doctor and the MLC. And so we could possibly just
9 go after the doctor. But then what have we done? We would get
10 a judgment against the doctor with a certain amount against a
11 party that was not represented at the trial. Could that
12 judgment then --

13 THE COURT: I would have thought that -- you know, I
14 was a general purpose litigator for thirty years before I went
15 into the -- no, twenty years -- before the thirty -- I finished
16 the thirty before I came here. But I would have thought that
17 employer and bad-acting doctor would be jointly and severally
18 liable, and that if the employer were on the hook because the
19 doctor screwed up in the performance of his job, it would be
20 the doctor who would be found at fault. And although the
21 employer might be jointly and severally liable to the
22 plaintiff, as between the doctor and the employer pointing at
23 each other, the doctor who got the employer into trouble would
24 be on the hook. Is my understanding of freshman tort law
25 incorrect?

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1 MR. GEBRAEL: Well, Your Honor, my understanding is,
2 and again, I'm not a tort lawyer, but if that is true that we
3 would proceed to have a jury trial and they would find both
4 parties jointly and severally liable, as you had stated, then
5 would that even be binding, though, on the party -- on
6 basically the employer that was not even present? Wouldn't
7 that prejudice the MLC for not even being present at the trial
8 where they were found jointly and severally liable? That
9 would -- what it would cause, actually, it would cause the
10 Brittinghams to retry the case against the party that was not
11 there at the time. And in fact, then, what we have done, is
12 not really saved any costs at all. We would have to -- poor
13 Ms. Brittingham has to go through now trial number one, come
14 back and say okay, we'll we're going to have another jury trial
15 to see whether or not the doctor that was not present at the
16 first -- sorry, the employer that was not present at the first
17 one, is now liable and what portion of the liability. We feel
18 that that would just be extra costs. And that wouldn't save
19 the debtor any money, Your Honor.

20 In terms of whether or not we would need to liquidate
21 the claim first and get a judgment in order to pursue Delphi,
22 it is pursuant to Ohio case law -- sorry, Ohio statute, Section
23 2721(2)(b) that states very clearly -- and the Ohio referring
24 counsel have done the proper research on this -- that we would
25 first need to liquidate the judgment, before then going to

1 Delphi and trying to figure out the question of how did Delphi
2 disclaim coverage after nine and half years of being present.
3 But we're not here, really, to answer that question.

4 That's a question that they'll have to answer. And of
5 course, through the guidance of this Court, after we get the
6 judgment, we can then look into -- we can then look into that
7 question. And Delphi's counsel, in fact, has already
8 approached us and said that Delphi's plan, although confirmed,
9 there's a Delphi plan injunction that we might have to address.
10 And again, let's take it step by step. When we get to that
11 point, we'll come back and we'll figure out how to pursue
12 Delphi's insurance carrier.

13 In terms of the fifth factor, whether there's
14 applicable insurance to defend the debtor, I've already stated,
15 Your Honor, that the applicable insurance here clearly is --
16 I'm sorry, in terms of whether there's insurance at all,
17 there's New GM defending Dr. Stull, and perhaps, there is
18 applicable insurance through Delphi that we'll have to address
19 at a later time.

20 In terms of the sixth factor, whether the action
21 involved third parties, I think I've gone over that. But I
22 wanted to address something in their objection. It says,
23 "Movants should sever the MLC or waive their claim against the
24 debtors." We don't have -- we're not required to do any --
25 we're not required to waive our claim against the debtors. And

1 again, I think we've already gone over this, that the MLC is a
2 necessary party. Nobody has been able to answer the question
3 of how do you isolate their liability. And again, the
4 Brittinghams would have to bring the case twice, which I feel
5 would be a grave injustice to the Brittinghams.

6 And again, if we do sever the MLC, then we still have
7 that problem where, well, the Delphi's insurance carrier is
8 going to say, well, you didn't have the Del -- you didn't have
9 the MLC at the Ohio State Court, so how is it that you're going
10 to go after the insurance carrier, where they were not even
11 present. So we'll even have that extra kind of hoop to jump
12 through.

13 Quickly, Your Honor. One of the things I really want
14 to point out that we're not going through -- we're not trying
15 to override any of the orders that Your Honor has entered. In
16 fact, the ADR procedures, if you go through it step-by-step, it
17 sets out that -- and I'll read from -- just a small part of it:
18 "As soon as reasonably practicable, upon completion of the ADR
19 procedures, if the claim is not resolved in ADR," which we see
20 here that it cannot, "it would then proceed to bankruptcy
21 court."

22 And we've already determined that it cannot proceed
23 through bankruptcy court because of 157(b)(5). Thus the next
24 step would be -- the next step in the ADR procedures would be
25 to go to section II(e)(3), which says that according -- "if the

1 claim was pending at a nonbankruptcy forum," which it is, "then
2 subject to the debtors' right to seek removal or transfer of
3 venue," which were not taken away, "the case will proceed in
4 nonbankruptcy forum."

5 That's all we're asking for. This is exactly what you
6 have set out in the order -- what they had set out in the
7 order, and that's what we're asking for today, Your Honor.

8 THE COURT: All right.

9 MR. GEBRAEL: Thank you.

10 THE COURT: Thank you. Mr. Smolinsky?

11 MR. SMOLINSKY: Your Honor, Joe Smolinsky for the
12 debtors. Once again, I think Your Honor cut right to the heart
13 of it. It may very well be that Dr. Stull and MLC are jointly
14 and severally liable. I have never heard anyone intimate --
15 and let's break up the two different potential sources of
16 recovery here -- no one has ever said that MLC was a necessary
17 party to a continued litigation against Dr. Stull. Dr. Stull
18 is being defended, even though Dr. Stull is no longer an
19 employee of New GM. She continues to be indemnified by New GM
20 under the MSPA. As indicated in their papers, there's a ten
21 million dollar fronting policy, which is available to provide
22 for recovery in the event that New GM fails to make good.

23 So the fact that it's joint and severally liable, the
24 only reason to come after the debtors would be in the event
25 that that judgment was not viable. So we don't understand why

1 they can't proceed. I also don't understand why a trial date
2 is being set in a case that's been stayed for all this time.
3 But we have no problem with them continuing to pursue Dr.
4 Stull.

5 The issue that I understand that requires MLC to be
6 involved, is the issue relating to the Delphi policy. We don't
7 believe that there is any coverage under any Delphi policy.
8 Opposing counsel said that we would take the judgment against
9 MLC and go to Delphi. But Delphi would say we have a
10 bankruptcy discharge, don't come looking at us. We can't
11 default in the state court trial because there's a residual
12 claim against MLC. So given the fact that it's highly unlikely
13 that there's any insurance to protect Delphi, why shouldn't we
14 have the opportunity to utilize the ADR procedures with respect
15 to the claim against the estate, before we have to sit through
16 a jury trial and participate in a jury trial, to prevent a
17 potential joint tortfeasor?

18 This case, as Your Honor noted, relates to a pre-
19 employment medical exam conducted by Dr. Stull. Dr. Stull is
20 the one who's liable for anything that was done improperly. We
21 don't believe that we're necessary to continue that case. And
22 if there's a time factor, they should proceed in due course.

23 In terms of some of the other lift stays that were
24 discussed, I just want to note, the Reynolds lift stay that was
25 mentioned before, that was a situation where it was on appeal.

1 There was an appellate bond that was posted. New GM purchased
2 that appeal bond under the MSPA, under the sale and purchase
3 agreement. And they wanted to proceed. They were undertaking
4 the appeal on our behalf and paying for the whole appeal in
5 order to seek to get that appeal bond back.

6 The Federal Republic of Germany we talked about, and
7 the related employee, Heinrich, who have claims. I believe
8 that those claims are going to ADR in the short -- in the near
9 future. We have no problem --

10 THE COURT: Well, I'm glad that they're going to ADR.
11 But did I grant relief from the stay?

12 MR. SMOLINSKY: I don't believe so. Those are going
13 through mandatory mediation.

14 THE COURT: Um-hum.

15 MR. SMOLINSKY: Yes, we will be going through claims
16 issues for a long time in this case. However, we're happy to
17 designate these claims now, if that addresses the time concern.
18 But before the estate is required to potentially, unnecessarily
19 participate, because at the end of the day, it may be that the
20 doctor is jointly liable, I think we should let that play out.

21 THE COURT: Okay. Thank you. Mr. Gebrael -- oh, the
22 creditors' committee.

23 MS. SHARRET: Jennifer Sharret from Kramer Levin on
24 behalf of the creditors' committee. We support the debtors in
25 opposing this lift stay motion. We have been working with them

1 very closely throughout the ADR procedures, which have been
2 very successful. As -- we've been notified whenever they
3 submit claims settlement amounts, but through the quarterly
4 statements they file of de minimis settlements, you'll see that
5 there are now many of these pre-petition litigation claims that
6 are being settled. And we think that this is a claim that
7 could be funneled through that process and to take up -- if the
8 debtors can do that, to designate it sooner to accommodate this
9 particular claimant's time issue. Thank you.

10 THE COURT: Thank you. All right, Mr. Gebrael, I'll
11 take brief reply.

12 MR. GEBRAEL: Just briefly, Your Honor. They are a
13 necessary party. There's all kinds of questions about how does
14 the procedures, the policies that the MLC had at that time, how
15 did it affect what the doctor had to report back. What were
16 those procedures? How is it that they weren't reported to Ms.
17 Brittingham, right away? Was there a duty under those
18 procedures? All kinds of questions that makes them a necessary
19 party, Your Honor.

20 And through the -- another question about the ADR
21 procedures nobody's been able to answer: they want us to cap
22 the claim. How do you cap the claim when you have these two
23 parties that nobody can isolate where the liability's going to
24 be? And they said that this is not required -- a judgment's
25 not required to go after Delphi. It is, under Ohio State

1 Court, unfortunately.

2 We wouldn't be going through these lengths, you know,
3 this trouble if it wasn't required that we get the judgment
4 first. We would have gone after the insurance policies first,
5 Your Honor. Believe me, nobody wants to waste any money of the
6 debtors -- the debtors' money here, Your Honor.

7 Thank you. That's it.

8 THE COURT: All right. Everybody sit in place for a
9 minute.

10 (Pause)

11 THE COURT: As the facts with immaterial exceptions
12 are undisputed, I'm not going to burn the record with my
13 findings of fact. And instead, I'm going to go straight to the
14 bases for the exercise of my discretion on this motion. And in
15 the exercise of my discretion, I'm granting relief from the
16 stay to the extent of permitting the Brittinghams permission to
17 liquidate their claim in the Ohio court system, with it
18 expressly being understood that if they prevail in the Ohio
19 court system, they will then have to come back to the Court to
20 get any distribution on account of the claim, and will continue
21 to be prohibited from utilizing any judgment enforcement
22 mechanisms against the assets of the estate.

23 The following being the basis for the exercise of my
24 discretion in this regard, where I will, then, talk about facts
25 that informed the exercise of my discretion. Both sides agree

1 that a matter of this character is subject to my discretion.
2 And when parties seek leave to proceed with litigation and
3 relief from the automatic stay to that extent that it's
4 governed by the Second Circuit's decision in Sonnax Industries,
5 and in particular 907 F.2d at page 1288, under which a very
6 fact-specific inquiry weighing a number of factors is required.

7 Sonnax identified twelve factors which are considered.
8 And I'm going to go into them now. The first is whether relief
9 would result in a partial or complete resolution of the issues.
10 There is debate as to the extent to which the debtors are a
11 necessary party to the Ohio litigation. And I am not deciding
12 that issue here and now. Ultimately, I think that is a
13 question of a Ohio law. But what is clear is that if the
14 litigation is successful against Dr. Stull, there likely will
15 be liability under agency doctrine that transfers over to Old
16 GM. And while it is possible that Old GM might be liable on
17 grounds -- or for wrongful conduct, apart from agency doctrine,
18 a matter as to which I express no view -- it is clear that the
19 facts in the two matters are closely related.

20 If Dr. Stull is found not to have done anything wrong,
21 although it's theoretically possible that there might be some
22 alternative basis to tag GM with a judgment, that strikes me as
23 unlikely. Finding out whether Mrs. Brittingham was, in fact,
24 injured by reason of any wrongful debtor conduct, is likely to
25 result in very nearly complete, if not totally complete,

1 resolution of the claim. And therefore this factor favors the
2 movants.

3 The factor of no interference with the bankruptcy case
4 tilts in favor of the estate, in favor of Old GM, but not to a
5 very dramatic degree. This is, as both sides recognize, one of
6 hundreds if not thousands of claims asserted against Old GM.
7 And the interference with the bankruptcy case, to the extent
8 there's likely to be that, is of two principal types. One is
9 the cost of defending the litigation, which presumably would
10 have to be paid for in post-petition administrative expense
11 dollars; which does adversely affect the estate. The second is
12 distraction upon Old GM management. But the fact is that there
13 isn't much left of Old GM, and that all the records are with
14 New GM, which is defending this litigation anyway.

15 This matter could not, under any circumstances, be
16 tried before me. So what is normally a factor, which is if it
17 diverts material judicial resources away from dealing with the
18 greater concerns of the case, is not much of a factor here.
19 Other things that deal with this come up more in the context of
20 judicial efficiency, and to a lesser extent, specialized
21 tribunal. So I'll say them there.

22 Obviously, once the claim is liquidated, it'll be
23 treated the same way as the remainder of the claims of the
24 unsecured creditors' community. And we're not talking about
25 getting a leg up over other creditors, which if it were

1 present, would be a material concern. But we're not talking
2 about that under any circumstances.

3 Another factor is whether or not the debtor is a
4 fiduciary. I disagree with the stated analysis by the
5 Brittinghams in their brief vis-a-vis this issue. This has
6 nothing to do with whether the debtor is charged with liability
7 as a fiduciary. And it can't be addressed by the Brittinghams
8 claiming that the debtors had a fiduciary duty to Mrs.
9 Brittingham. What it does do is that in cases -- not this
10 one -- where the debtor is holding property as a fiduciary,
11 that's not subject to creditor claims, that would have a lesser
12 effect on the remaining creditor community. And if that set of
13 facts were applicable, that would be a factor favoring relief
14 from the stay. But it has nothing to do with this case. It
15 certainly doesn't help the Brittinghams, or, frankly, does its
16 absence help the debtor. It's a non-factor.

17 Specialized tribunal is, to my understanding, based on
18 the forty years I've been doing this now, a little different.
19 If you had a patent dispute, where maybe litigating it in
20 ordinary federal court, like the Eastern District of Texas,
21 might give you some benefits, that might tell you something.
22 Or of course, if it were a matter involving a particular
23 specialized kind of claim, where a particular kind of tribunal
24 might be able to fix liability, such as the NLRP or something
25 like that, specialized tribunal would apply. It doesn't here.

1 But there are first cousins to that argument that do, which get
2 into the area of judicial economy, which I'll deal with at that
3 time.

4 This factor, in other words, if it were present, it
5 would support relief from the stay on this ground. It's not
6 present here. There are some similar strong arguments for
7 judicial economy, but not on specialized tribunal.

8 Insurance defense is murky, because we have, both
9 because of retained limits and insurance companies making some
10 of the arguments we hear from time to time that they're not
11 liable, it's not clear one way or the other. Somehow, I
12 suspect if it were clear, that there were insurance coverage,
13 which an acceptably low retained limit, the debtor would have
14 just shrugged its shoulders and said you can go against the
15 insurers, and the plaintiff's side would have said great, let
16 us go against the insurers. And in fact, we enter into -- or
17 parties enter into stipulations of that substance -- I'm exaggerating
18 slightly when I say all the time -- and we judges approve them
19 all the time. But I think it's because of the uncertainty as
20 to the insurance coverage that we don't have a deal of that
21 character here.

22 It may be that there is insurance coverage here. And
23 to the extent there is, it will favor relief from the stay.
24 I'm not insensitive to the point that there may have been
25 coverage for eight and a half or nine and a half years, with

1 late disclaimers of coverage. I'm not going to express any
2 views as to whether arguments recognizing that fact have merit
3 or not.

4 To the extent there is insurance, it favors granting
5 relief. But I'm not going to place great reliance on it,
6 because I'm not sure whether or not that coverage is there and
7 is enforceable.

8 The action primarily involves third parties, is one
9 which has some relevance, and more than minimal relevance here,
10 because you've got an action against Dr. Stull now being
11 defended by New GM. And while it is theoretically possible
12 that GM might be on the hook for something bad that it did,
13 apart from something Dr. Stull did, for the most part, this
14 litigation looks like it's an effort -- involves Dr. Stull's
15 conduct, right or wrong, and that GM is on the hook for Dr.
16 Stull's conduct, right or wrong.

17 It is true, as the movant suggests, that one of the
18 main purposes of the Ohio litigation is to determine the
19 culpability -- I'm going to insert the words "if any" -- of Dr.
20 Stull's action. And it appears to be undisputed that New GM or
21 its carrier, has assumed Dr. Stull's defense. I think I can
22 appropriately find that this factor applies and that it favors
23 relief from the stay.

24 The pending litigation would not affect or prejudice
25 the other creditors of the debtors, slightly, but only

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1 slightly, tilts in opposition to granting the motion. Other
2 creditors will be affected, of course, by the dilutive effect
3 of an allowed claim, but I don't think that by itself is enough
4 to find the prejudice within the meaning of this factor. More
5 importantly, they're going to be tagged with the expense of
6 defending the claim. But because so much of it involves
7 whether Dr. Stull did anything right or wrong, and because New
8 GM is going to be defending that, it seems to me that the
9 incremental defense burden on New GM -- excuse me -- Old GM,
10 Motors Liquidation Company, is likely to be materially less
11 than it would be if it were the only one with either knowledge
12 of the litigation or principal responsibility for defending it.
13 So for those reasons, I think that while the pending litigation
14 would affect other creditors of the debtors, it would do so
15 only to an acceptable and modest extent.

16 The interests of judicial economy is a major factor
17 here, because as the Brittinghams argue, and I ultimately
18 agree, if this claim can't be settled, an outcome devoutly to
19 be wished, it's going to have to be liquidated somewhere. And
20 then the issue is whether I should allow it to be liquidated in
21 the Ohio court system or whether I should stick it on a
22 district judge in this district.

23 If a district judge in this district has to liquidate
24 this claim, he or she is going to have to take a case that's
25 now nine and a half years old and start over. And while

1 district judges in this district certainly have the ability to
2 try PI actions, in fact, they have a statutory responsibility
3 for doing so under 157 of the judicial code, it is not the best
4 use of a district judge's time to try a case of this character
5 when that exact case has been pending for nine years in the
6 state court system, and where state courts hear these PI cases
7 all the time, and our district judges have federal question
8 cases and criminal case loads and more complex litigation,
9 soaking up their time, all the time.

10 Additionally, starting over in a court which -- where
11 another litigation is either ready for trial or practically so,
12 and which has been going on in that other court system for nine
13 years, is nuts. It's not just unbalanced better, it's nuts.
14 And I think I would need to be nuts to send one of the district
15 judges in this district a litigation that has been going on for
16 nine years in the state court system and which is practically
17 ready for trial.

18 That, of course, merges right into the next factor,
19 the parties are ready for trial. I don't quite take it a
20 hundred percent as given that you could start a trial on this
21 case tomorrow and that the parties are absolutely ready for
22 trial in Ohio, but they've got a nine year head start, and
23 they're very close, and I think it's fair to say that the
24 uncertainties as to this issue are the principal impediment to
25 that case being put on the trial calendar and being ready to

1 go.

2 It is undisputed, as a matter of fact, that this case
3 was in the final stages of readiness for trial when the action
4 was stayed. And while final stages of readiness is subject to
5 multiple interpretations, I think it's very different from any
6 number of relief from stay matters that I've had where a
7 complaint has been filed and little if anything further has
8 gone on.

9 Balancing of harms is another factor, and it's very
10 important. Of course, the fact is that after more than eight
11 years of litigation, Mrs. Brittingham is still waiting for her
12 lung transplant. Her health is continuing to deteriorate. And
13 although nobody can guarantee that either her case will be
14 tried or that any judgment, if otherwise abstained would be
15 payable before she gets sicker, it's undisputed that she's in
16 serious straits and apparently that she's still waiting for her
17 lung transplant.

18 This case is very different than others that I've
19 dealt with where somebody's got an employment discrimination
20 claim, wants to get a little extra money into his or her
21 pocket. This is at the more extreme end of prejudice to a
22 litigant.

23 Now, I cannot and will not assume that the litigant's
24 going to prevail in that tort litigation in Ohio, and it may be
25 that even if the case is tried in Ohio, that's not going to

1 solve her problems. But nevertheless, considering that here,
2 basically what I have is the relatively modest incremental cost
3 for the estate in defending a litigation that New GM is going
4 to be defending anyway by reason of its duties to defend Dr.
5 Stull, and where Old GM's liability is principally as a
6 consequence of agency doctrine, I think the balancing of harms
7 tips materially in favor of the movant.

8 For the following reasons I determine that on balance,
9 the Sonnax factors tip in favor of granting the stay, to the
10 extent I stated, not totally; and to that extent, that motion's
11 to be granted.

12 Mr. Gebrael, you're to settle an order in accordance
13 with the foregoing, stating that in substance, for the reasons
14 set forth on the record, the motion is granted to the extent,
15 but only the extent that I granted it. Time to appeal or move
16 for leave to appeal from this determination, to run from the
17 time of the entry of the order, and not from the time of this
18 dictated decision.

19 Not by way of reargument, do we have any further
20 business? Okay, we're adjourned.

21 MR. SMOLINSKY: Thank you, Your Honor.

22 THE COURT: Oh. Everybody sit down. One thing that I
23 did not discuss, but that I should. Every motion of this
24 character has floodgates implications. And I've considered
25 those before issuing this ruling and talking about the other

1 things. But not having previously discussed the floodgates,
2 there was implicit in that that I did not consider it a
3 material factor here, but I should just state the reasons for
4 that.

5 I continue to believe every time that I decide a
6 motion of this character in a large case, that there are
7 potential floodgates issues, but I've considered that by reason
8 of the unique circumstances of this one, they're not of a
9 material -- sufficiently material concern to cause me to
10 consider that floodgates concerns alone should cause me to a
11 different result.

12 For the avoidance of doubt, because I know, every time
13 I even dictate a decision, that somebody tries to remind me of
14 it the next one that comes down the pipe, it's only because of
15 the extraordinary balance in the facts of this one that I'm
16 engaging in the Sonnax analysis and granting relief from the
17 stay here, because floodgates concerns do continue to be of
18 concern to me. It's just that I don't think this one's going
19 to be that material to the next.

20 Okay, now we're adjourned.

21 (Proceedings concluded at 12:57 PM)

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I N D E X

R U L I N G S

| DESCRIPTION | PAGE | LINE |
|--|------|------|
| Motion of Debtors for Entry of Order Approving Stipulation and Agreed Order Between the Debtors, Wilmington Trust Company, and Citibank, N.A. Solely in its Capacity as Paying Agent, re: Proofs of Claim Nos. 47871, 47872, 65729, 65793, and 66723, approved. | 20 | 19 |
| Motion of Debtors for Entry of Order Approving Agreement Resolving Proof of Claim No. 44887 and Implementing Class Settlement, approved. | 27 | 25 |
| Debtors' Motion for Preliminary Approval of Settlement, Including Claims Estimation, for Conditional Certification of Settlement Class, to Approve Cash Disbursement and Forms of Notice, and to Set Fairness Hearing in the Boyd Bryant v. Motors Liquidation Company Adversary Proceeding, approved. | 35 | 25 |

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R U L I N G S (cont'd.)

| DESCRIPTION | PAGE | LINE |
|---|------|------|
| Debtors' Seventeenth Omnibus Objection | 39 | 7 |
| to Claims, granted, and adjourned as to | | |
| Hawaii, Ohio, Michigan, the IRS, and | | |
| Connecticut. | | |
| Debtors' Twenty-Fifth Omnibus Objection | 37 | 18 |
| to Claims, granted. | | |
| Debtors' Twenty-Sixth Omnibus Objection | 38 | 6 |
| to Claims, granted. | | |
| Debtors' Twenty-Seventh Omnibus Objection | 38 | 6 |
| to Claims, granted, and adjourned as to | | |
| responses of Echols, Johnson, Kulis, Carmack, | | |
| Dilks, Jones, and Buckley. | | |
| Debtors' Twenty-Eighth Omnibus Objection | 39 | 7 |
| to Claims, granted by default, and adjourned | | |
| as to response of Acument. | | |

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R U L I N G S (cont'd.)

| DESCRIPTION | PAGE | LINE |
|--|------|------|
| Debtors' Twenty-Ninth Omnibus Objection to Claims, granted, and adjourned as to responses of VTI and Demassi. | 39 | 7 |
| Debtors' Thirtieth Omnibus Objection to Claims, granted, and adjourned as to responses of VTI and Demassi. | 39 | 7 |
| Debtors' Thirty-First Omnibus Objection to Claims, granted. | 39 | 7 |
| Debtors' Thirty-Second Omnibus Objection to Claims, granted, and adjourned as to responses of VTI, Demassi and First United. | 39 | 7 |
| Debtors' Thirty-Third Omnibus Objection to Claims, granted. | 39 | 7 |
| Debtors' Thirty-Fourth Objection to Claims, granted, except as to withdrawn response of Szejna. | 39 | 7 |

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R U L I N G S (cont'd.)

| DESCRIPTION | PAGE | LINE |
|---|------|------|
| Debtors' Thirty-Fifth Omnibus Objection | 39 | 7 |
| to Claims, granted, except as to withdrawn | | |
| response of Mahoney. | | |
| Debtors' Thirty-Sixth Omnibus Objection | 39 | 7 |
| to Claims, granted. | | |
| Debtors' Thirty-Seventh Omnibus Objection | 39 | 7 |
| to Claims, granted, except as to withdraw | | |
| responses of England Reynolds, and adjourned | | |
| as to responses of Clark and Hayman. | | |
| Debtors' Thirty-Eighth Omnibus Objection | 39 | 7 |
| to Claims, granted, and adjourned as to | | |
| responses of Georgia, New York State and New | | |
| York City. | | |
| Motion of Dean M. Trafelet for an Order | 40 | 20 |
| Clarifying the Order Appointing Him as Legal | | |
| Representative for Future Asbestos Personal | | |
| Injury Claimants and Directing Payment of His | | |
| Fees and Expenses, granted. | | |

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R U L I N G S (cont'd.)

| DESCRIPTION | PAGE | LINE |
|---|------|------|
| Motion of Debtors for Entry of Order Approving Settlement Agreements with Respect to (A) the International Association of Machinists and Aerospace Workers, and (B) the International Brotherhood of Teamsters, granted. | 42 | 5 |
| Motion of Debtors for Entry of Order Authorizing the Debtors to Amend the Terms of Their Engagement Letter with AP Services, LLC, continued. | 67 | 11 |
| Application by AP Services, LLC as Crisis Managers to the Debtors for Approval of the Success Fee, continued. | 67 | 11 |
| Time sheets of AP Services will be filed and provided to the examiner. | 80 | 21 |

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R U L I N G S (cont'd.)

| DESCRIPTION | PAGE | LINE |
|---|------|------|
| Motion of Julie and David Brittingham for | 107 | 14 |
| Relief from the Automatic Stay to allow the | | |
| Completion of a Pending Personal Injury | | |
| Action, granted to the extent described on | | |
| the record. | | |

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C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true
and accurate record of the proceedings.

Clara Rubin
AAERT Certified Electronic Transcriber (CET**D-491)

Veritext
200 Old Country Road
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Date: August 9, 2010